
LEGAL GUIDE TO INVESTING IN NIGERIA



EDITED BY PAUL ONIFADE

Greatness has no finish line.

Because good enough will never change the world.

The race for better never ends. That's why we'll never settle for how things are. We'll keep challenging ourselves. And the world of banking. Because things aren't good enough. Yet. And we're not here for good enough, we're [Here for good.](#)



Calvin Smith

9.93s

Carl Lewis

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Leroy Burrell

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Maurice Greene

9.79s

Asafa Powell

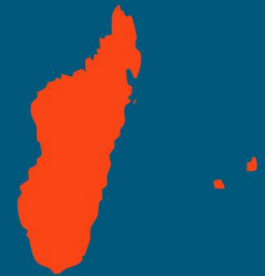
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Usain Bolt

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SUPPORTING YOUR BUSINESS IN NIGERIA, AFRICA
AND GLOBALLY

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CORPORATE F
GLOBAL REACH
DJIBOUTI MAUR
INFRASTRUCTURE
SUDAN MINING B
TANZANIA
ENVIRON
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Editorial Notes

About Nigerians in the Square Mile

It is now ten years since Crowther Solicitors, a London practice formed by two Nigerian lawyers, hosted some Nigerian professionals at a Summer Party in their offices at Greville Street. It was there it dawned on the guests that this was a rare gathering of Nigerians making positive impact for their various firms in the financial district of London. There the idea of ‘Nigerians in the Square Mile’ (NISM) was born with the simple goal of creating an organisation that would bring aspirational, like-minded Nigerians together for the sake of all.

One of the stated objectives of NISM is to be the “bridge” between London and Lagos so that we can facilitate investments and trading opportunities between our two countries.

NISM now has 5 main subgroups which are: Banking & Finance; IT & Security; Governance, Regulation and Compliance; Legal and Ypro, representing young professionals aged 30 and below.

NISM organise intellectually stimulating symposia annually. These have been hosted by top City institutions such as JP Morgan, UBS, Standard Chartered, Berwin Leighton & Paisner LLP, No 5 Chambers. Our discussion topics often proffer practical solutions to some of the challenges facing the Nigerian economy and have included Infrastructure Finance; Banking Reforms; Governance and Entrepreneurship among others.; In 2017 for instance, the question posed to Kola Ayeye of AMCON was “*Seven Years of AMCON - Has Confidence in Banking Been Restored?*”

Our 2015 Survey of institutional investors in London provided powerful insights into the attractions and challenges of investing in Nigeria. Colloquially, the investors concluded that “*Nigeria may be scary from afar, but it is far from scary*”. NISM

is dedicated to changing this view. Foreign investors need to feel just as comfortable deploying capital in Nigeria as they do in South Africa, Poland or India.

Legal Guide- Overview

This Legal Guide for Foreign Investors is NISM's attempt to change the narrative and make investors comfortable within the Nigerian legal landscape. The need for this Guide was highlighted when officials at the Department of International Trade indicated to us that the publication of a comprehensive Legal Guide is necessary to advance trade relations between the UK and Nigeria post-Brexit.

This Legal Guide is aimed at investors who are exploring ways to gain access to the many attractive opportunities that Nigeria offers including projects in Power, FinTech, Healthcare, Construction, Transportation, Education, Housing, Mining and the list goes on. Working with some world-class Nigerian lawyers, we have prepared this publication to provide legal guidance that will help investors to circum-navigate what to a new investor are the uncharted waters of the Nigerian investment environment.

It will be seen that the preliminaries of the Guide include an insightful interview granted by Oscar Onyema OON, the CEO of the Nigerian Stock Exchange and a piece on Key Investment Opportunities prepared by the Nigerian Investment Promotion Commission.

The core of the Publication covers a range of relevant subjects such as the Legal System, Corporate Governance, Intellectual Property, Corporate Finance, Mergers and Acquisition, Taxation as well as Dispute Resolution. It also deals with how to invest in a range of industries.

Nigeria is a trading nation and it has a well-developed legal system that is rooted in and substantially based on English Common Law. Other sources of law in the country are its written constitution, legislation, case law, customary laws and

International laws. The landscape can be complex and this Guide is not intended to replace legal advice, necessary for investments. In Nigeria there are excellent lawyers who are well placed to assist potential investors to successfully navigate their way into conducting business in the country.

On Nigeria

Nigeria enigmatic response to its challenges have always been interesting. It is a country that confounds not just its critics but itself. In spite of the chaotic and corrupt administrations of the past, growth is still happening according to Forbes Africa's most recent publication. Investors around the globe, including Brazil, Russia, India, China, Turkey South Korea, Japan are all investing heavily in Nigeria. The recent visits of the German Chancellor, French President, Lord Mayor and the British Prime Minister this summer, show that Europe is beginning to take Nigeria seriously again. With Brexit at the door, we are willing to declare to investors in London and across the globe that Nigeria has re-opened for business.

Paul Onifade

Chair, NISM

Director of Legal Affairs, Tate Petroleum Ltd

Acknowledgments

NISM owes a debt of gratitude to the Contributors who are listed below. This publication is made possible by the generosity of these contributors who devoted time and resources to the production of informative articles without charging any fees. Further appreciation to Bryan Cave Leighton Paisner LLP and Standard Chartered Bank for their role in producing hard copies of the Guide.

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Interview with Oscar Onyema OON

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IKENNA IROCHE - BLACK & GOLD ADVISORY

Oscar, you are not only the CEO of the Nigerian Stock Exchange but you are also a Patron of Nigerians In the Square Mile, the curator of the Legal Guide to Investing in Nigeria. What impact do you expect (or hope) the publication of this Guide to have on Nigeria's ability to attract FDI inflows?

As one of Africa's leading exchanges, The Nigerian Stock Exchange provides an efficient platform for saving and accessing capital for investors and business all over the world. With this in mind, it is expected that the publication of the Legal Guide to Investing in Nigeria will increase awareness, confidence and transparency in the regulatory framework around the listing and investment business in Nigeria. We anticipate that this will have a positive impact on Nigeria's ability to attract both Foreign Portfolio Investment (FPI) and Foreign Direct Investment (FDI) inflows by helping prospective investors to safely navigate the Nigerian investment landscape.

I should point out that investor protection is very important to us at the NSE and we have taken the necessary steps to ensure that our market is fair and orderly. In 2016, we acquired NASDAQ's SMARTS platform to proactively detect and deter manipulative tendencies, gather intelligence and execute risk-based supervision of flagged participants. We have also implemented other

initiatives aimed at providing investors with timely information on the compliance status of our dealing members and issuers including BrokerTrax, our member compliance report, and Compliance Status Indicator (CSI) codes (for issuers). In addition, we have institutionalized our investor education program and launched X-Academy in June 2017, because we have identified investor education as a veritable tool for galvanizing informed investments and necessary step towards protecting investors in our market.

Taking all these into consideration, I believe the Legal Guide to Investing in Nigeria will provide investors with a grasp of the activities of the Exchange and increase investors' participation in the Nigerian capital market as well as the wider economy.

As CEO of the NSE, what influence do you have on the evolution of corporate and investment law in Nigeria?

The Exchange is a self-regulatory organisation. It creates and enforces rules and regulations on its dealing member firms (i.e., the licensed stockbrokers) and listed companies; and for the general trading of securities on its platform with a view to ensuring a fair and orderly market. Given the constantly evolving business landscape, The Exchange continuously reviews and amends its rules and regulations in line with emerging market trends and global best practices.

In the area of corporate law in Nigeria, The Exchange initiated and continues to champion, as part of its regulatory framework, the improvement of corporate governance amongst listed companies. In recognition of the importance of good corporate governance as an essential tool for long-term growth, sustainability and value creation, The Exchange encourages listed companies and dealing member firms to adopt global best practices by implementing strong regulatory reforms. In furtherance of its mission to provide investors with a reliable and efficient capital market, The Exchange, in partnership with the Convention on Business

Integrity (CBI), established a Corporate Governance Rating System (CGRS) for companies listed on the NSE. CGRS assesses companies based on the quality of corporate integrity; corporate compliance culture; the understanding of fiduciary responsibilities by directors as well as corporate reputation. 35 listed companies and 435 directors have so far passed the corporate governance rating under the CGRS initiative.

We also participate in periodic reviews of key legislation, with a view to positioning the Nigerian capital market and wider economy for growth. For instance, in 2017 we reviewed and commented on the Companies and Allied Matters Act Cap. C20 LFN 2004 (CAMA), the principal companies' legislation in Nigeria; as well as the Investments and Securities Act, No. 29, 2007 (ISA), which governs the capital market. We are currently championing the Demutualisation Bill and working on other bills such as the CISI bill, the Stamp Duty bill etc.

What changes or improvements are you currently lobbying for?

We constantly engage with relevant authorities for policy and legislative improvements aimed at boosting market activity and ultimately enhancing the ease of doing business in Nigeria. Some of these include the development of a legal and regulatory framework to support the launch of exchange-traded derivatives and the operation of a functional central counterparty clearing house to clear and settle derivatives and commodities transactions in Nigeria.

As I mentioned earlier, the NSE is also advocating for an enabling law for the demutualization of The Exchange. The demutualization of The Exchange will put the Nigerian capital market on a par with other international jurisdictions in terms of enhanced governance and visibility whilst attracting strategic partners, more sophisticated investors and good quality issuers.

As the CEO of the NSE, you are at the forefront of the mission to boost the amount of investment capital deployed in Nigeria.

In what areas have you witnessed the most progress in this mission?

Upon assuming the role of CEO in April 2011, my team and I launched a ‘Transformation Agenda’ to reposition the NSE as a globally competitive Exchange and we have since made a lot of progress in this regard. For instance, we have augmented our product offerings with the addition of ETFs to our existing equities and fixed income segments and are working assiduously to bring derivatives to market. We continue to work on other product categories in the near to mid-term.

Our efforts to sanitize the market have resulted in a well-regulated marketplace, based on a zero-tolerance policy toward market infractions. Our regulatory capacity was strengthened as we adopted the use of the latest “Reg-Tech” solutions similar to those deployed by leading exchanges, such as our Broker Oversight & Supervision System (XBOSS), designed to improve the efficiency and security of the regulatory communication between the NSE and the dealing member community; X-Whistle, which empowers investors to report possible market violations and SMART, our world-class surveillance system. The NSE Rulebook (the “Rulebook of The Exchange, 2015”) was also launched in electronic format as a virtual web-based document that facilitates quick and easy access to all of the NSE's rules and regulations.

What is currently top of your agenda in this regard?

The demutualization of the Exchange continues to be a priority for us and we are hopeful that the Demutualization Bill will be signed into law in 2018. We are also working hard to introduce exchange-traded derivative instruments into the Nigerian market. This will help us meet our objective of facilitating order flow across various asset classes; and offer our ever-increasing community of domestic and global investors a greater array of products to enable them to meet their investment objectives through diversification and risk management. We will also

continue to engage with the government on privatization and listing of state-owned enterprises. We will maintain our role as an advocate for the adoption and implementation of market-friendly policies required for sustainable economic growth.

A significant theme of your stewardship of the NSE has been a concerted effort to elevate the standards of corporate governance through a mix of education and new regulations for the management teams of the listed companies. Tell us how far you think you still have to go to achieve a standard that you will be happy with?

Our strides in imbibing and promoting sustainability practices are significant, but there is a lot more to do to increase the competitiveness and sustainability of the Nigerian capital market. This requires a concerted effort by the entire ecosystem, from the capital market community to the regulators, legislators and policymakers. On our part, we will continue to make ourselves available to support Nigeria's newly-privatized entities to access capital required for critical business infrastructure and service upgrades via the equity market. We are also committed to financing low-cost, eco-friendly housing through green bonds and infrastructure bonds amongst many other innovative products that support Nigeria's socio-economic development.

There is no question that these are challenging times for our nation, but it is also an opportune time to take a step back and re-strategize on how best to safeguard the future of our economy and imbibe a culture of sustainability in all of our developmental planning. It is our expectation that the SDGs will reinforce this vigour and encourage the private sector to join the public sector in providing energy, housing and transport services that meet Nigeria's economic, social and environmental demands.

Under your stewardship, the NSE signed a capital markets agreement with the London Stock Exchange in 2014 to support dual listings in Lagos and London. Can you give us an update

on progress with that agreement in particular and the NSE's relationship with the LSE in general?

International and regional partnerships are essential in achieving our aspiration of becoming a globally competitive Exchange. Our collaboration with London Stock Exchange is geared at encouraging seamless cross-border access between our markets to ultimately develop larger capital markets that enable capital formation for businesses and governments; creating deeper liquidity pools and greater competitiveness for investors; as well as enhancing capacity and promoting diversity of investment products to meet the needs of a wide range of investors and issuers. The first agreement was signed in 2014. In 2017, the agreement was renewed allowing the two exchanges to build on the progress achieved to date. Since the partnership began, the bourses have held five successful NSE/LSEG Dual Listings Conferences in London and Nigeria aimed at providing global visibility and access to the deep capital pools from both markets. It also demonstrates our commitment to encouraging dual listings in Lagos and London, as well as promoting the developments of the Nigerian capital markets infrastructure on a global stage.

It is worthy of mention that this agreement has built on existing strong commercial and economic ties between the UK and Nigeria. And it has made significantly more efficient, the listing and trading of ordinary shares of Nigerian companies listed in London, as well as those of UK companies on the Nigerian market. Seplat, the oil and gas business, which raised \$500m in an IPO via this mechanism was the first company to simultaneously dual list shares in London and Nigeria. Subsequently, Federal Government of Nigeria securities have also dual-listed in London and Nigeria, and we expect to dual list a number of corporate Eurobonds before the end of the year.

Should we expect a lot more dual listings over the next couple of years?

Yes, we are engaging issuers and have a strong and viable pipeline

Are there any lessons to be learned from the dual listings that have taken place so far?

The dual listings that have taken place have helped to attract international investors to the exchange. It has also helped to harmonize operating models at the exchanges, especially in the back office. The biggest lesson learned is that we must service our clients properly, regardless of what geographies they want to access.

You are the sitting President of the African Securities Exchanges Association – what progress has ASEA made in its goals to grow and deepen capital markets across the continent?

Over the last few years, the African Securities Exchanges Association (ASEA) has focused heavily on building its profile and the profiles of its member Exchanges. Our flagship annual conference remains one of the most prominent conferences held on the continent every year hosting over 300 delegates at each event. This year's conference which will hold from November 25 to 27, 2018, will be hosted by The Nigerian Stock Exchange. Our renowned Building Africa Financial Markets (BAFM) capacity building seminar which was traditionally hosted by South Africa is now being rotated across the continent with Nigeria, Morocco and Kenya having hosted the last three seminars.

Elevating the profiles of these platforms and fora has been one of the key strategic initiatives under my presidency and I believe we have done exceedingly well in these areas. This is reflected in the number of strategic partnerships we have entered into over the last three years. Each of these relationships provides the association and its members with technical, strategic or financial support. For example, the MoU with AfDB kick-started the renowned African Exchanges Linkage Project (AELP) which as you know is aimed at pooling liquidity in the African capital market. The project has now been scoped and we are in the

process of sourcing a technical solution to facilitate cross-border trading within participating exchanges.

Our relationship with Financial Sector Deepening Africa has already begun yielding rewards as they are financing a three-year secondment program to boost capacity at the ASEA secretariat and among the members. They are also financing the development of an information portal to provide investors with greater visibility into activity on African exchanges and listed companies. Other critical relationships that support us include our collaboration with the CFA Institute which provides discounts for participating candidates in African capital markets, as well as the CISI which is working toward standardising the certification of brokers across the continent. We have also enhanced transparency into African markets with the FTSE/ASEA indexes and our improved website.

All of these capacity-building efforts and strategic alliances have supported our market development efforts with more African exchanges becoming members of the World Federation of Exchanges, becoming demutualized and establishing CCPs to support advanced product development efforts.

Will the Continental Free Trade Agreement play a significant role in boosting ASEA's efforts?

Yes. Should the modalities be fully developed and implemented, we believe the AFCTA will play a significant role in facilitating the free movement of securities and the flow of capital across national borders. We believe this will directly support our AELP program.

Bringing our questions back home, Nigeria has become a major hub for the development of new and disruptive technologies in Africa. How does the NSE intend to participate in and, hopefully, boost the growth of this sector?

Our refined vision 'to be Africa's preferred exchange hub' is based on four (4) pillars of growth, namely, operational excellence, customer-centricity, innovation and partnerships. In selecting innovation as a pillar for growth, we are seeking to

institutionalize innovation as a foundation for the sustainability and long-term competitiveness of our business. In order to capitalize on the opportunities presented by the 4th Industrial Revolution, The Exchange is investigating the market potential of disruptive and emerging technologies and deploying solutions which: (i) empower a larger proportion of the populace to access the capital market; and (ii) unlock efficiencies in product and service delivery for capital market operators. Actualizing our aspirations requires a broad, collaborative effort. Thus, we will partner with private organizations, including technology companies, to identify and implement game-changing technologies that can catalyse growth in the Nigerian capital market.

As we mentioned earlier, NISM is a Diaspora organisation of which you are a patron. What is your message, or perhaps challenge, to NISM's members and leaders who want to make a contribution to Nigeria's economic growth?

What 3 things could NISM do to assist the NSE in getting closer to achieving its objectives?

At the Nigerian Stock Exchange, we recognize Nigerians in Diaspora as a rich resource with high investment potential. Diaspora Nigerians present wonderful opportunity to help the development of the Nigerian economy by investing through The Nigerian Stock Exchange. In recognition of this, the NSE will continue to carry out initiatives to inspire Diaspora-led investment for sustainable economic growth. NISM members can help us propagate this message.

NISM can assist the NSE is spreading the word on the significant improvement happening in the Nigerian market. NISM can also help us get feedback in term of additional products we can provide to help Nigerians in diaspora meet their investment objectives.

The Legal Guide to Investing in Nigeria has been prepared with the intention of making it easier and more attractive for foreign investors to deploy capital in Nigeria. As the CEO of the

country's primary bourse, what message(s) would you like to send to prospective investors from the UK and beyond?

The capital market is a global marketplace, so there is no capital market that can grow without participation by both domestic and foreign investors. Bearing in mind our objective of making the Nigerian capital market the premier hub in Africa, we encourage foreign investors to participate in our market. That is why 48% of trading activity is foreign with a significant portion of that coming from the UK.

We have implemented and supported a number of market-friendly reforms which have positively impacted the stock market, making it the 3rd best performing stock exchange in the world in 2017, according to CNN. This is the right time to come into the market, as the Nigerian economy recovers from oil price and production shocks which we experienced in the last two years.

For any prospective UK investors looking to get in touch with the NSE, what is the best way to do this? (E.g. a web-link or email address)

We have a multichannel communications strategy, so investors can use the platform most suitable and convenient for them.

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Nigeria, the Investment Destination of Choice

Background

The drive for private investments by economies continues to be intense, propelled by increasing uncertainties in developed economies. Africa has emerged as the favoured investment destination in recent times. This trend is expected to continue as the continent presents new landscapes for impact entrepreneurship.

Nigeria's proposition as an investment destination of choice is apt. The economy is endowed with great economic potential and is expected to be one of the world's top economies by 2050; it is a member of the MINT countries, and one of the next four largest emerging and developing economies after the BRICS countries. All these are clear attestation to the potential inherent in the economy.

With a population size of over 180 million which is expected to rise to about 400 million by 2050, Nigeria presents one of the largest internal markets in the world. Demographically, about 60% of its population are within the working age group.

The Nigeria is currently the largest economy in Africa with a Gross Domestic Product (GDP) of US\$375.8 billion in 2017. The recovery from recession was achieved through the effective implementation of the Economic Recovery and Growth Plan (ERGP. The commitment to improve the business environment has seen an improved ranking of the economy to 24 places according to the World Bank in the 2018 Ease of Doing Business Report. The national medium-term economic plan for 2017 to 2020 has a vision for sustained inclusive growth that is anchored on:

- a stable macroeconomic environment
- agriculture and food security

- energy sufficiency (power and petroleum products)
- improved transportation infrastructure
- industrialization focusing on small and medium scale enterprises

Key Opportunities

Overall, the Plan projects to grow the economy at an annual average of 4.62% during the period of its implementation. This is to be achieved by focusing on growth sectors i.e. sectors that have consistently contributed significantly to the GDP and attracted investors interests, both domestic and foreign.

Manufacturing

The manufacturing sector accounts for about 9% of Nigeria's GDP with enormous untapped potential. The Nigeria Industrial Revolution Plan (NIRP), the sector's policy document, has been designed to drive expansion of the sector by leveraging on the opportunities in the agri-business and agro-allied, solid minerals and metals, oil and gas downstream, and construction, light manufacturing and services activities to build an end-to-end integrated industrial value chain, boost local production and reduce reliance on imports of industrial and finished products.

Solid Minerals

Solid minerals sector is one of the most promising sectors of the Nigerian economy. There are 44 commercially viable minerals of varying mixes and proven quantities. Every one of the 36 States of the Federation has unexplored or under-utilised mineral deposit. While mining remains largely rudimentary and undertaken by small entrepreneurs, the Government has articulated a Solid Mineral Policy to integrate artisanal miners into the formal sector, promote mineral processing and value addition industries to strengthen backward and forward integrations.

Services

The Services sector is the highest contributor to national GDP accounting for over 50%. It is also a major target sector for Foreign Direct Investment (FDI); attracting more than half of the total FDI inflow into the economy. Telecommunications, Information and Communication Technology (ICT), financial services, tourism and creative industries are the growth activities.

The liberalization of telecommunications industry has seen the sector grow astronomically to being identified as the fastest growing communications industry in the world. In the past five years, Nigeria has grown to become one of the largest and most vibrant markets for ICT products and service in Africa. According to Google statistics, Nigeria is now more of a software producing country than software consuming country with most of the software used in Nigeria being developed locally. Nigeria accounts for 29% of the total internet usage on the continent. This figure is expected to rise over the next years with the increase in the usage of e-commerce platforms, thereby creating a huge demand for data.

Nigeria's creative industries; film, music, broadcasting and publishing have grown into a multibillion-dollar industry and ranks among top in the world. The strength of the industry is hinged on the film and fashion sub-industries. The film industry is reputed to be the largest in Africa in terms of value and volume and second largest in the world in terms of volume. This is about 200 videos for the home video market every month. With the application of affordable digital filming and editing technologies, which has improved the quality of the films produced, the industry presents a huge opportunity for foreign capital and expertise.

Power Sector

The lack of adequate infrastructure to support the economic potential have been a major bane to the Nigerian economy. This however presents a huge opportunity

for investors. Current power demand is estimated at 18,000MW including latent and suppressed demand, against about 4,500MW peak generation. The Government continues to create the enabling environment for private participation in the infrastructure sector. The power industry has been deregulated. The National Electric Regulatory Commission (NERC) continues to fine-tune the regulatory framework to build investors' confidence and promote transparent management of the relationship between operators in the industry.

Nigerian Investment Promotion Commission (NIPC)

The NIPC is the national investment promotion agency was established to encourage, promote and coordinate investments. It serves 4 principal functions

- To project Nigeria's image as an attractive investment destination
- To promote investments in Nigeria, by Nigerians and non-Nigerians;
- To support investors with quality aftercare and help facilitate their investment in Nigeria;
- Policy advocacy: to initiate or support measures that will ensure that Nigeria meets her investment generation ambitions.

The NIPC Act includes some vital protections for investors in Nigeria, including:

- The right to invest in any business, except those on a negative list which are also not open to Nigerians
- The right to export any returns they earn in Nigeria or their original investment through authorised channels
- A guarantee that no Nigerian government will expropriate their investment
- In the event of a dispute with government, investors have a right to seek arbitration, including in the International Court for the Settlement of Investment Disputes

NIPC works closely with the private sector and acts as a liaison between investors and several government agencies. In the drive to ensure investors have access to comprehensive, up-dated information on doing business in Nigeria, the Commission:

- i. Published the Compendium of Investment Incentives in Nigeria. This is a compilation of fiscal incentives in Nigerian tax laws and sector-wide fiscal concessions duly approved by the Federal Government and supported by legal instruments. This first edition covers 5 sectors, and work is in progress to produce an addendum which is expected to include State-specific incentives. Copy of the Compendium is available at www.nipc.gov.ng.
- ii. Developed an easy-to-use online platform that provides investors with pertinent information that would enable them to make better-informed decisions on Nigeria as a preferred investment destination. This is with the support of the United Nations Economic Commission for Africa and the United Nations Conference on Trade and Development. It provides information on Starting Business, Labour, Production Factors, Land, Taxes, Investor Rights, Growth Sectors and Opportunities.

The platform is available at www.theigudes.org/nigeria or www.nipc.gov.ng/iguide.

- iii. Instituted the Nigerian Investment Certification Programme for States (NICPS), working with the States' Government to build the capacity of the States to:
 - a. provide complete, accurate and relevant information to investors in a timely manner
 - b. offer sites and buildings that meet targeted investors needs in a transparent and efficient manner.

- c. promote and sell the region in a focused manner and to offer professional levels of service to potential and existing investors.

This process leads to the award of a certification that expresses the readiness of the State to provide support services to investors.

In the context of this publication, please be assured that Nigeria is not just open for business, Nigeria is ready for business! For further information please contact:

Nigerian Investment Promotion Commission (NIPC)

Plot 1181 Aguiyi Ironsi Street

Maitama District

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G E O R G E

E T O M I &

P A R T N E R S

LEGAL PRACTITIONERS

**This Legal Guide is not intended to replace legal advice, necessary for
investments.**

Introduction to the Nigerian Legal System and Foreign Investment Law



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Nigeria is a trading nation and it has a well-developed legal system that is rooted in and substantially based on English Common Law, but unlike the English law, it has a written constitution that is patterned after the character of the United States of America. Other sources of law in the country are statutes, case law, customary laws and international law.

Nigeria is a Federal Republic, in this instance consisting of 36 States. There is a Federal Government and each State also has its own Executive, Legislature and Judiciary. The executive branch of the Federation is led by the President, while each constituting State is led by a Governor. The operation of the Nigerian legal system under the constitution, reserves certain powers of legislation for the Federal Government. These are referred to as "exclusive powers", covering matters such as Aviation, Banking, Defence, Foreign Affairs etc. "Concurrent powers," are those powers which are shared by both Federal and State

governments, both may act or intervene on the subject matter, but the Federal Government overrides the State if there is conflict. "Residual powers," are those that are left to, or designated to the States. In other words, everything that is, "left over." Examples of residual powers are those regarding civil law, urban planning and property law.

Regulatory Framework

In a bid to boost foreign investment, several laws have been enacted and regulatory bodies have been set up in Nigeria and here we list 3 important pieces of legislation.

1. Companies and Allied Matters Act Cap C20, LFN, 2004. (CAMA) sets out the role of the Corporate Affairs Commission (CAC). It regulates the incorporation of companies, business names, incorporated trustees and other incidental matters. Except where a foreign entity is exempt from registration and granted exemption status by the CAC, registration is a requirement for doing business in Nigeria. A foreign company may be granted exemption status from company registration by the CAC if:
 - it is invited into Nigeria by or with the approval of the Federal Government for a specified project or
 - where it is in Nigeria for an individual project on behalf of a donor country or international organisation or
 - it is engaged solely in export promotion activities or the foreign company contains technical and engineering consultants executing a specific project.
2. Nigerian Investment Promotion Commission Act 1995 (NIPCA) created the Nigerian Investment Promotion Commission (NIPC) and its primary function is to attract, assist and regulate foreign investors. It has now set

up its “One Stop Investment Centre”. This is an investment facilitation mechanism that has proven to be a major improvement on what previously existed. It provides a seamless transparent service facilitating the space where investors can access all relevant information, documents and statutory approvals that are needed to set up an investment project in Nigeria. A foreign investor is required to register with the NIPC prior to operating in Nigeria. The NIPC Act also sets out a “negative list” that prohibits private investment (domestic and foreign) in production of arms, ammunition, paramilitary wares and accoutrements as well as the production of and dealing in narcotic drugs and psychotropic substances.

3. The ISA established the Securities and Exchange Commission (SEC) as the key regulatory authority for capital markets in Nigeria. It places the duty on directors to ensure the integrity of a company's financial controls and reporting.

Company Law

The most common corporate form in Nigeria is the limited liability company, registered by the CAC and regulated by the provisions of the CAMA. Once a limited liability company is incorporated, it will have a legal personality separate and distinct from its shareholders. A key feature of the limited liability company is that its assets and liabilities are separate from those of its shareholders (whose interest is limited to the shares held in the company and the rights such as dividends flowing therefrom). The liability of a shareholder in relation to a limited liability company is limited to the cost of the shares subscribed to by such shareholder.

A limited liability company may be set up at the CAC within five business days.

Incorporation formalities for a limited liability company

The procedure for incorporating a limited liability company is as follows:

1. *Securing a name* – a person seeking to incorporate a company at the CAC will, as a first step, need to apply for and reserve a name for the company. There are restrictions on the type of name that may be reserved (the CAC will not approve any name that is similar to the name of an existing company or contains certain prohibited words). An approved name is reserved for the applicant's use for a period of 60 days (this is extendable) within which the incorporation must be completed.
2. The subscribers are required to prepare the necessary documentations such as Memorandum and Articles of Association and complete all other relevant forms and pay the appropriate fees for a company to be registered.
3. *Fees* – the registration cost comprises stamp duty registration fee and other miscellaneous costs for example, the cost of incorporating a company with a share capital of one million Naira (NGN) is approximately NGN20,000.

Acquiring a company

Under Nigerian law, a company may be acquired by the purchase of the shares of existing shareholders of a target company, subject to the provisions of the CAMA, the terms of the Articles of Association of the company and any agreement between the existing shareholders. By virtue of the provisions of the CAMA, the acquisition by a third party of shares in a private company is subject to the approval of the board of directors of the company. Furthermore, where the Articles of Association or any agreement between shareholders provides non-transferring shareholders a right of pre-emption in relation to the sale of any shares in the company, the acquirer will need to procure a waiver from such existing shareholders of their rights of pre-emption before the shares may be acquired. Upon registration of the transfer, the company issues a new share certificate to the transferee and the transfer becomes effective. Following the

conclusion of the share transfer, it may be registered within 14 days at the CAC, to serve as notice to the public of the new ownership of the company.

Repatriation of Funds by Investors

The NIPC Act provides for Investment guarantees, transfer of capital, profits and dividends. Where funds have been imported for the purpose of investment in a lawful enterprise, a foreign investor is guaranteed unconditional transferability or repatriation of their profits, dividends, payments in respect of loan servicing where a foreign loan has been obtained, proceeds (net of all taxes), and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment through an authorised dealer, in freely convertible currency.

In addition, the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995 (Forex Act) provides that no foreign currency imported into Nigeria will be seized, forfeited or expropriated by the government save where such transactions relate to goods or services which are prohibited under Nigerian Law. Investments made in foreign currency must be imported through an authorised dealer and converted into Naira at the official exchange rate. The authorised dealer subsequently issues a Certificate of Capital Importation to the investor as evidence of the capital importation. This is to guarantee shareholders and investors the unconditional transfer or repatriation of their profits, dividends, etc. which are attributable to their investment.

Protection of Property

The NIPC Act guarantees ownership and protects against the threat of nationalisation or compulsory acquisition of a foreign investor's interests by the government. Should a need arise for compulsory acquisition, the law makes provision for payment of fair and adequate compensation and a right of access

to the courts for the determination of the investor's interest or right and the amount of compensation to which he is entitled.

Transfer of Technology

The transfer of technology in Nigeria is governed by the National Office for Technology Acquisition and Promotion Act 2004, which established the National Office for Technology Acquisition and Promotion "NOTAP). The principal function of NOTAP is to encourage a more efficient process for the identification and selection of foreign technology.

Tax Incentives

The Nigerian government has put in place several tax incentives to encourage and attract foreign investors. Tax relief is available to companies operating in pioneer industries or producing pioneer products. Such companies can enjoy an income tax holiday of up to seven years. In addition to income tax holidays, pioneer companies enjoy other benefits. Companies operating in Tax Free Zones and Export Processing Zones are exempt from tax obligations in Nigeria for operations carried out in the zones provided that all the companies' activities are performed exclusively within the zone. Further, tax relief/exemptions are available in respect of interest on loans obtained to do business or invest in Nigeria. Other tax incentives relating to VAT, petroleum tax, and company income tax are covered in more detail in Chapter 9.

Immigration Regulations

The Immigration Act 2015 was enacted to make easier to do business in Nigeria and to align Nigerian laws with international standards with respect to employment, administration, deportation etc. In the main there are 4 types of visas applicable for non-residents visiting for work purposes. The first is the Business Visa which is issued to allow an investor to attend meetings in the

country. The second is a temporary Work Permit that allows a foreigner to gain entry for the purpose of taking on a short-term employment. This is issued for 3 months but may be extended for another 3 months. The third is Expatriate Quota, this allows companies to employ expatriates and the company must apply for and be granted the quota of expatriates that may be employed by that organisation. Employees will be considered as residents for tax purposes. Finally, there is the Combined Expatriate Residence Permit and Aliens Card (CERPAC) which permits non-residents to reside and work in Nigeria. This permit is valid for 3 years and it is renewable.

Following an Executive Order in 2017, the Government has now adopted a policy of “visa on arrival”. This is a class of short visit visa issued at the port of entry. The facility is available to frequently travelled High Net Worth Investors and Intending Visitors who may not be able to obtain visa at the Nigerian Missions/Embassies in their countries of residence due to the absence of a Nigerian mission in those countries or exigencies of urgent business travels. There is further information on the Nigerian Immigration Service website.

Corporate Governance & Anti-Money Laundering Measures



MCPHERSON LLP

Corporate Governance

The primary legislation dealing with corporate governance in Nigeria is CAMA, which is applicable to every registered company in Nigeria, whether it is public or private, limited or unlimited liability. CAMA sets out specification for the duties of directors, the powers of shareholders, and provides for the minimum governance structures expected of the regulated entities as well as specifying reporting and disclosure standards.

The other legislation and industry-specific codes of corporate governance worth mentioning are:

- **The ISA** – as previously mentioned, it establishes the Securities and Exchange Commission (SEC) as the key regulatory authority for capital markets in Nigeria. It places the duty on directors to ensure the integrity of a company's financial controls and reporting.

- **Banks and Other Financial Institutions Act 2002 (BOFIA)** – charges the Central Bank of Nigeria (CBN) with the duty of regulation and supervision of banks and other financial institutions in Nigeria and grants the CBN powers to make subordinate regulations for the financial sector.

The Code¹ of Corporate Governance for the Key Industries in Nigeria

There are various industry specific codes, which largely mirror each other and have due regard to the provisions of the Money Laundering Prohibition Act 2011 (MLPA). Here are some general principles:

- **Compliance Function** – the codes mandate the creation of a compliance unit and function, compliance officer designation and duties, conduct of customer due diligence, monitoring and filing of suspicious transactions reports to the NFIU, other reporting requirements, record keeping and anti-money laundering/combating the financing of terrorism (AML/CFT) employee training.
- **Board Participation in Policy Formulation** – institutions must have policies, controls and procedures which are approved by their boards to enable them to manage and mitigate risks that have been identified by the country or by the institutions.
- **Board Approval of AML/CFT Compliance Policy and Procedures** – the ultimate responsibility for AML/CFT compliance is placed on the board and management of every financial institution in Nigeria. They

¹ SEC Corporate Governance Code for Nigerian Public Companies 2011; Code of Corporate Governance for Banks and Discount Houses in Nigeria 2014; Code of Conduct in the Nigerian Banking Industry (Professional Code of Ethics and Business Conduct) 2014; Code of Good Corporate Governance for the Insurance Industry in Nigeria 2009; Code of Corporate Governance for Licensed Pension Operators 2008.

must ensure that a comprehensive operational AML/CFT policy and procedure is formulated annually by management and presented to the board for consideration and formal approval.

- **AML/CFT Employee Education and Training Programme** – Institutions must design employee education and training programs and render quarterly returns on their level of compliance on such programmes to relevant regulators, as well as submit their annual training program for the following year.

As mentioned earlier, the content of the codes generally mirrors each other. Therefore, there is some confusion as to which code(s) shall prevail in case of inconsistencies between them. The Financial Reporting Council of Nigeria Act 2011 was created to unify and harmonise the provisions of the multiple codes. This led to the introduction of three national codes in 2016. These national codes were later suspended pending discussion, as it appears that, not all relevant stakeholders were consulted during the drafting and review.

Anti-Money Laundering Measures

Nigeria was previously considered by the international community as a *hub* for money laundering and related financial crimes. In recent years, Nigeria has enacted various items of legislation to address the negative perception and tackle the challenges of money laundering and the financing of terrorist activities. This development has led to the removal of Nigeria from the Financial Action Task Force's Anti-Money Laundering list of countries identified as jurisdictions with significant deficiencies in their Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) regime.

The Economic and Financial Crimes Commission (EFCC) and the Nigerian Financial Intelligence Unit (NFIU)

The Economic and Financial Crimes Commission (EFCC) is the designated body responsible for coordinating regulators in anti-money laundering and enforcement of all laws dealing with economic and financial crimes in Nigeria. Under the supervision of the EFCC, the Nigerian Financial Intelligence Unit (NFIU) is responsible for monitoring economic and financial crimes:

In 2017, a concern arose about the independence of the NFIU in relation to the EFCC and it resulted in Nigeria's suspension from the Egmont Group of Financial Intelligence Units. Nigeria took this criticism seriously and the Nigerian Senate acted swiftly in passing the Nigerian Financial Intelligence Agency Bill (NFIA) currently pending Presidential Assent. The bill will have far-reaching implications and will impose heavier sanctions on offenders than what presently exists

Money Laundering Prohibition Act 2011 (MLPA)

The Money Laundering Prohibition Act is the primary law governing money laundering in Nigeria and many regulations derive their authority from this Act. It imposes a duty on financial institutions to report any transfer of funds or securities exceeding US \$10,000.00 to or from a foreign country, to the CBN, SEC or the EFCC within seven days from the date of the transaction.

Financial institutions are also obligated to develop internal policies to curb the laundering of the proceeds of crime or illegal activity. Such policies include: the designation of compliance officers at management and branch level, conducting regular training for employees and establishing an internal audit unit to ensure compliance with the provisions of the MLPA.

The present legal regime in Nigeria places corporate and personal liability on institutions and their management for compliance deficiencies. Boards and senior

management personnel must remain alert to their anti-money laundering implementation, monitoring and reporting obligations in order to avoid any liability under the extensive corporate governance and anti-money laundering regime.

Listing on the Nigerian Stock Exchange



NIGERIAN STOCK EXCHANGE

The Nigerian Stock Exchange (NSE) services the largest economy in Africa and is championing the development of Africa's financial markets. The NSE, a registered company limited by guarantee, was founded in 1960. It is licensed under the Investments and Securities Act (ISA) to operate as a securities exchange and a Self-Regulatory Organisation and is regulated by the SEC. The NSE offers listing and trading services, licensing services, market data solutions, ancillary technology services and more.

The NSE belongs to some international and regional organizations that promote the development and integration of global best practices across its operations such as: The World Federation of Exchanges and; the International Organisation of Securities Commissions. The NSE is also a founding member and executive committee member of the African Securities Exchanges Association.

A company should consult professional advisers to discuss the different methods of listing, to ascertain which of the options best suits the company's needs. The

company's choice will depend on a number of factors, including the nature of its business, capital requirements and strategic objectives. The NSE offers several options to companies seeking to list on its platform.

Companies seeking admission to the Daily Official List of the NSE can be admitted for trading on any of its three Boards: Premium, Main and Alternative Securities Market (ASeM):

- **Premium Board** – showcases an elite group of Issuers who have satisfied The NSE's most stringent standards on market capitalization, corporate governance and liquidity;
- **Main Board** – the standard listing segment - is home to majority of listed companies; and
- **ASeM (Growth Segment)** – a segment for emerging businesses with high growth potential characterized by less stringent listing standards and fees relative to other Boards.

Currently, there are three companies listed on the Premium Board; 153 companies on the Main Board; and 10 on the ASeM Board. In addition to equities and bonds.

The NSE offers a number of other investment products such as Exchange Traded Funds (ETFs), Depository Receipts (DRs), and Mutual Funds. Advanced progress has been recorded in the development of the Derivatives market. Derivatives must be cleared by a Central Counterparty (CCP). Companies that wish to list on the NSE must also comply with the relevant provisions of CAMA and any applicable rules and regulations set by the ISA, the SEC and various other regulatory bodies.

Methods of Listing

Listing of securities at the NSE can be done through any of the following methods:

Initial Public Offering (IPO)

Under this method, the company interested in listing offers shares to the public for the first time

and then lists the shares. This is done using any of the following offer types:

- **Offer for subscription** – where the unissued portion of the company's authorized share capital is offered for purchase by the public. Proceeds from this offer go to the company for its development purposes.
- **Offer for sale** – where the company's already issued and paid-up shares are offered to the public by current shareholders. The capital raised through this method goes to the selling shareholders, allowing initial shareholders or promoters to cash out or dilute their holding in the company.

Listing by Introduction

Under this method, the company's shares are listed on the NSE without seeking to raise any capital from the investing public. The prospective company in this regard must have already met the NSE's listing requirements, including a minimum number of public shareholders (300 to list on the Premium Board and Main Board, and 51 to list on the ASeM), and the minimum free float (20% for the Main Board; 15% for ASeM).

Dual Listing

A dual listing on the NSE is an option available to companies already listed on other exchanges, or companies that seek to list on the NSE and another stock exchange, which will serve as the company's primary listing venue. A company seeking dual listing on the NSE must seek to be listed on another exchange

simultaneously with the NSE or be already listed there. Companies seeking a dual listing are typically required to have an operating track record of at least two years and be incorporated or otherwise established in a jurisdiction where the standards of shareholder protection are at least equivalent to those provided in Nigeria. The company is not required to have operations in Nigeria.

Depository Receipts

Depository receipts (DRs) are certificates representing evidence of ownership of a company's shares held by a depository. Foreign Issuers listed on another stock exchange acceptable to the NSE can seek listing through the depository receipt programme. DRs can provide Issuers increased flexibility to meet their corporate and financing objectives.

General Listing Requirements

- An application for listing must be sponsored by a Dealing Member of the NSE. A Dealing Member is a member of the NSE that is authorized to buy and sell securities on behalf of the public, or for its own account.
- All securities for which listing is sought shall first be registered with the SEC.
- The company whose securities are to be listed must be a public company, which will issue or must have issued an invitation to the public to subscribe for its shares or must have satisfied the Council (Board) of the NSE that the public is sufficiently interested in the company's shares to warrant listing.
- Before the approval of Listing, all applicant companies shall sign a General Undertaking that they will promptly provide certain information about their operations, and that they will comply with all applicable Rules of the NSE, and their continuing obligations to remain listed on the NSE.

- A company that applies for listing shall comply with the minimum free float requirement prescribed for the Listing Standard criteria chosen by the company (20% for Main Board, and 15% for ASeM). In certain exceptional situations, the NSE may grant an extension of time to meet the free float requirements.

The NSE Rulebook sets out the requirements for listing on the NSE. All current requirements are detailed in the NSE's Listing Requirements publication. Also, the NSE has a Due Diligence Book for Listing of Securities on The Nigerian Stock Exchange, which is available on its website for prospective and existing Issuers, as well as potential investors.

Benefits of Listing

The NSE's commitment to creating deeper liquidity pools; greater competitiveness for investors; increased global visibility and seamless cross-border access between stakeholders in the Nigerian markets and the global market, has influenced its decision to seek mutually beneficial strategic capital markets partnership agreements with other securities exchanges, such as the Casablanca Stock Exchange (CSE), Johannesburg Stock Exchange (JSE), and the London Stock Exchange Group (LSEG). These partnerships laid the foundation for Nigeria's first equity dual listing wherein SEPLAT Petroleum Development Company Plc (NSE: SEPLAT, LSE: SEPL), raised US\$500mn (oversubscribed to US\$538mn) on both the NSE and the LSEG in 2014, to acquire oil and gas assets, and repay shareholder loans.

In addition to being able to access growth-enabling capital, being listed on The NSE offers enormous benefits of business sustainability, good corporate governance and sound business practices; diversification of financing options through the utilization of company shares as currency to support acquisition and growth objectives; higher profile and visibility for listed companies through

increased coverage from investors, media and research analysts; companies' enhanced transparency and credibility status owing to the rigorous disclosure and governance requirements; an avenue to place an objective market value on the business, as well as for creating a liquid market for trading the company's shares to unlock value for all stakeholders.

Franchise Law



OGUN THE LAW FIRM

Nigeria has become a destination for reputable international brands such as, Pinkberry, Dominos, Steers, Cold Stone Creamery, Johnny Rockets, Hard Rock Café, KFC, Butterfields, T.M. Lewin, Nike and Adidas. With a growing middle-class and a population of over 180m, Nigeria is worthy of consideration when making investment decisions. Taking a franchise to a new country is a monumental decision for any brand and deciding the strategy to adopt to ensure a profitable navigation of a new terrain can be equally dicey to both the established and the prospective franchisor. However, the established franchisor has the option of coming into the new territory or appointing a master franchisee. That luxury might not be available to a relatively new franchisor

Nigeria does not have any franchise specific legislation or rules dedicated to franchising contracts and agreements. In the absence of this, the general principles of Nigerian law of contract and other bodies of law will operate to regulate the enforcement, or otherwise, of franchise agreements. Franchise agreements can be registered under the NOTAP Act subject to specifications. Other applicable laws are the Trademarks Act 1990, Patents and Designs Act

1990, Copyright Act 2004 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995.

Pre-contractual Disclosure Obligations

Although there are no statutory provisions requiring pre-contractual disclosure under the Nigerian law, Nigerian courts enforce the provisions of common law and equity. The courts have noted that there are essentially two types of obligations which could be imposed on contracting parties. The first is to disclose all known material facts to the other contracting party. The second is a duty to refrain from making active misrepresentations, that is to say, a contracting party is not compelled to disclose information, but once he does disclose, he must do so truthfully.

The position therefore is that if the relationship between the parties, or the nature of the contract, imposes a duty to disclose on the franchisor, the failure of the franchisor to disclose might operate against him. Also, if the franchisor makes an obviously false disclosure, or where his conduct suggests the existence of a false state of affairs, the franchisor will be liable in misrepresentation. The franchisee's remedy in this circumstance will depend on the type of misrepresentation alleged. The common law Tort of deceit might also apply.

Registration of Franchising Agreements

The National Office of Technology Acquisition and Promotion (NOTAP) is a body established by the NOTAP Act with the duty of registering all contracts providing for the transfer of foreign technology to Nigerian parties. All agreements involving the transfer of technology between a foreign entity and a Nigerian party must be registered with and approved by NOTAP. These contracts must be between any person in Nigeria and another person outside Nigeria and such agreements will be registrable if its purpose and intent is in connection with use of a trademark, patent invention, supply of technical

expertise, supply of machinery and plant, provision of operating staff or managerial assistance and training of personnel etc.

However, NOTAP may still register a franchise agreement, if it is in the “*national interest*” to do so. To qualify for registration, a franchise agreement must comply with the specifications stipulated in the NOTAP Act such as, the technology to be transferred must not be freely available in Nigeria; the agreement must not impose restrictions on technological research or development by the franchisee; and the agreement must not exceed a 10-year or other reasonable term.

The NOTAP certificate of registration will be required before the franchisee can remit monies due under the contract or agreement to a franchisor outside Nigeria. To obtain the certificate, an application to register the contract or agreement is to be addressed to the Director of NOTAP, and should the Director be satisfied that the agreement or contract does not contravene the restrictions contained in the NOTAP Act, the certificate will be issued accordingly.

Although, there are various restrictions in the NOTAP Act, most of which seek to ensure fairness between the parties, the Director of NOTAP, has a wide discretion under the NOTAP Act, to register an agreement that does not conform to the requirements if it is in the “national interest” to do so. With the recent drive for encouragement of foreign investment in Nigeria, it is expected that more franchise agreements entered between the foreign franchisor and a Nigerian franchisee will be approved as being in the national interest.

Franchising Fees

NOTAP will approve a ‘reasonable’ lump sum initial franchise fee, a royalty fee ranging from 0.5%-3% of net sales and an advertising fee of up to 1% of net sales. An application for registration or renewal of technology transfer agreements should be made within 30 days from the effective date of the

agreement. Failure to present the agreement within that period might attract a penalty fee.

A consequence of the failure to register a franchise agreement with NOTAP is that the franchisee will be unable to make remittance of fees payable to the offshore franchisor through the official foreign exchange market. The current rate of the fees payable to NOTAP are:

- Presentation Fee – N50,000
- Penalty Fee – N100,000
- Registration Fee (Ranges from) – N100,000 – N20 Million & above

It is worth noting that case law has determined that failure to register with NOTAP does not affect the validity of the contract.

Mergers & Acquisition of Private Companies



PROSPERIS HOLDINGS

One of the routes to investment in Nigeria is through Mergers and Acquisition (M&A) of existing business. M&A transactions have become the standard approach used by corporations that wish to achieve diversification, obtain or increase existing market share, or accelerate their growth and productive capacity. In Nigeria, the process of merging or acquiring a business depends largely on whether the target company is a private company or a public company.

Although mergers and acquisitions are often referred to as a pair, in reality, they are different and the Securities and Exchange Commission Rules (SEC Rules) make a distinction between the process for a merger and the process for an acquisition; details of both are discussed in this section.

The principal legislation regulating mergers and acquisitions in Nigeria are here below:

- ISA

- Rules of the Securities and Exchange Commission 2013
- CAMA
- the Rule Book of the Nigerian Stock Exchange (applicable to listed public companies).

The SEC is the body responsible for the regulation of mergers and acquisitions in Nigeria. Mergers and acquisitions between two foreign companies are outside the regulatory scope of the SEC. Other key regulators include: The CBN, the Nigerian Communications Commission, National Insurance Commission, Nigerian Civil Aviation Authority, and Department of Petroleum Resources, among others.

There are also sector-related rules applicable to companies operating in particular industries which would apply alongside the above mentioned. For example, the Banks and Other Financial Institutions Act 1991 regulates mergers and acquisitions in the banking sector, the Nigerian Communications Act 2003 regulates the telecommunications sector, the Power Sector Reform Act 2005 regulates the power sector and the Insurance Act 2013 regulates the insurance industry. These laws require that the prior approval of the sector regulator be obtained where there is an acquisition of a specified percentage in a company operating in that sector, subject to the final approval of the SEC.

The SEC Rules sets out three classes of M&A transactions. These include horizontal (involving corporations who engage in business in the same sector), vertical (*between companies in a complementary but non-competitive relationship*) and conglomerate (*two or more companies that engage in completely unrelated aspects of business*). The choice of category will depend on the objectives of the investor.

Merger

A merger is the amalgamation of the undertakings or interests of two or more companies incorporated in Nigeria. The ISA sets out the thresholds for mergers,

which then determine, the procedure that will be applied within a transaction. Categorisation of mergers is based on the threshold of the combined assets and/or annual turnover of the merging companies in Nigeria. These categories are: small, intermediate or large. A small merger is one in which the combined assets or annual turnovers are below NGN1 billion. An intermediate merger; combined assets or annual turnovers are between NGN1 billion and NGN5 billion. A large merger; combined assets or annual turnovers are above NGN5 billion.

Companies are not required to obtain the prior approval of the SEC with respect to small mergers. However, they must obtain prior review and approval of the SEC with respect to intermediate and large mergers. Nevertheless, post-merger notifications will need to be undertaken for all categories of mergers.

As mentioned above, the SEC is the primary body charged with the responsibility of considering the desirability of a merger and weighing this against public interests. The SEC will consider a number of factors when determining the desirability of a merger, such as:

Whether the merger is likely to result in any technological efficiency or other pro-competitive gains which will be greater than and offset the effects of any prevention of competition and these gains are not likely to be obtained if the merger is prevented;

Whether the merger can or cannot be justified on substantial public interest's grounds; and

Whether all shareholders are fairly, equitably and similarly treated and given sufficient information regarding the merger.

Mergers between two foreign companies is however outside the regulatory purview of the SEC.

Summary of the Procedure for Mergers

A bidder will usually conduct due diligence and review preliminary documentation before executing any agreements. The importance of thorough due diligence preceding the execution of the M&A agreement cannot be over emphasised as a prudent and precautionary measure against fraud and financial crime, as well as ensuring that there is a perfect match between the investor and the target company. Typical documentation includes: memorandum of understandings, exclusivity agreements and confidentiality agreements.

The Board of Directors of the merging companies will propose and pass separate resolutions approving the merger. Following board approval, the directors of the merging companies should send a pre-merger notification to the SEC and registered employee trade unions, along with a N50,000 fee. Although this pre-merger notification to the SEC is only compulsory for intermediate and large mergers and not for small mergers, it is still advisable that SEC approval is sought.

The SEC will review the notification and request sight of any other documents, affidavits or relevant information in respect of the merger within 20 working days with an extension of 40 working days. The SEC may grant an approval in principle to the proposed merger and direct the merging companies to apply to the Federal High Court for court ordered meetings of the merging companies. At the court-ordered meetings of each of the merging companies, special resolutions must be passed approving the proposed merger. Once the court has granted permission for the merger, the merger becomes binding on the parties and the merging companies will have to satisfy the post approval requirements of filing with the CAC.

Revocation of the Merger

The SEC retains the power to revoke a merger if the decision approving the merger was based on incorrect information. This will be the case for example if the approval was obtained by deceit or a company concerned in the merger has

breached an obligation attached to the decision. This power has no time limit and can therefore be exercised long after the merger has taken place.

As part of the competition law considerations, the SEC will only grant approval where it is satisfied that the business combination is not likely to eliminate or substantially lessen competition or create a monopoly.

Acquisition

An acquisition involves the purchase of a portion of the shares or assets of a company (the target) by another company (the acquirer). A key question which a prospective buyer should ask at the early stages of the acquisition process is whether it is preferable to acquire specific assets of the target or the shares of that company. The difference is that in the case of a share purchase, the ownership of the company including all its assets and liabilities is acquired, whereas with the sale of assets, the acquirer selects individual categories of assets and liabilities of the target that it is interested in. The main commercial advantage of acquiring assets is that the acquirer can avoid inheriting the liabilities of the target business. A typical example of such liabilities includes remediation costs if the target has committed an environmental offence in the past.

The main commercial advantage of structuring an acquisition as a share purchase is that continuity of business is preserved, and the company may carry on its business without any interruption. The only noticeable changes might be changes to the Board i.e. the directors and perhaps the leadership of the company.

Whilst acquisition of shares is relatively straightforward, acquisition of assets can be very complex as this may involve, identifying ownership structures and ensuring that proper titles to the assets are transferred to the acquirer.

An acquisition transaction may require the prior approval of the SEC if the acquirer aims to hold controlling shares in a target company. According to the ISA, a person/company controls a company if it:

- beneficially owns more than half of the issued share capital of the company;
- is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person/company;
- is able to appoint or to veto the appointment of a majority of the directors of the company
- is a holding company, and the company is a subsidiary of that company as defined in CAMA; and
- has the ability to materially influence the policy of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to above.

SEC Rules outline two exemptions to the requirement to obtain SEC approval in the case of an acquisition:

- where the acquisition is by a holding company which is acquiring shares solely for the purpose of investment and not for voting or to cause substantial restraint of competition; and
- where the acquisition is in a private or unquoted public company with assets or turnover below NGN1 billion.

Hostile Transactions & Minority Squeeze Out

Under Nigerian law, when a person or company acquires shares (including acquiring by a series of transactions over a period of time) carrying 30% or more of the voting rights of a public company (the bidder), the bidder is required to make a takeover offer to the shareholders holding the same class of shares. The

purpose of this is to give the minority shareholders an opportunity to exit the company in the event of a change of control of the company when the bidder becomes a shareholder of the company.

Approval to proceed with a takeover bid must be obtained from the SEC before making the takeover bid. Where the SEC grants approval and registers the takeover bid, the takeover bid is to be dispatched to the shareholders and directors of the target company for acceptance.

In order to obtain control of the target company, the bidder will need to receive acceptances in relation to shares which, when added to any shares that the bidder has already acquired, amount to more than 50% of the voting shares of the target company. Once the bidder has more than 50% of the voting shares of the target it will have the power to remove the directors of the board of the target. However, most bidders will be aiming to receive acceptances in respect of at least 90% of the of the total shares of the target company because it will then be entitled to compulsorily acquire any outstanding shares from those minority shareholders.

Nigerian law does not provide a framework for hostile transactions. However, the ISA sets out a process which allows a bidder to obtain control of the target company and 'squeeze out' the minority shareholders who do not accept the offer by the bidder. To enable a squeeze out in a takeover scenario, the bidder must have acquired at least 90% of the shares of the company. For the purpose of calculating the 90% threshold, shares already held by the bidder prior to the takeover are not taken into account.

Break Fees

There is no limitation on quantum of break fees. Parties usually execute exclusivity agreements to prevent the target company from dealing with other

potential buyers for an agreed period of time during the negotiation period of the transaction.

Anti-Trust/Anti-Competition

Nigeria does not have a competition specific law, and the SEC uses indices in the ISA to determine if a particular transaction may prevent or substantially restrain competition. The indices include an assessment of the strength of the competition in the relevant market, and the probability that the company will behave competitively or co-operatively post-merger/acquisition, taking into account any factors relevant to competition in that market.

Summary of M&A Process

Heads of Agreement/Expression of Interest

This is the first stage where the parties agree the Heads of Terms of the transactions. This often covers a checklist and timetable for the content of the final documentation. It will include general terms such as the price, condition precedents, definition of the assets or description of asset being acquired, the completion date etc. This document is often not a legally binding agreement but the clauses providing for confidentiality and non-disclosure of company's sensitive information, exclusivity and jurisdiction are usually binding on the parties.

Due Diligence

This is the term used for the buyer's investigation of the seller's business affairs to confirm all relevant representations made by the seller. It refers to the care a reasonable person should take before entering into an agreement or a financial transaction with another party. This will include reviewing all technical and financial records, all legal and other contractual issues and anything else deemed material. On-going or pending litigation, environmental liability,

community relations issues are all to be investigated as any of these findings may affect the ultimate decision of the buyer or the price to pay for the asset.

Negotiation of the Agreement

Parties through their lawyers tend to negotiate the terms and prepare the contract for the parties to execute on a specified date.

Exchange and Completion

Contracts are prepared in such a way that on the day of exchange of contracts, the buyer will be obligated to pay a deposit. The seller will then disclose all the necessary documentations referred to during negotiation. Such will include: proof of title, authorisation of the Board, licenses, government approval, insurance documents, consent of the banks etc. The parties are also required to provide all the necessary warranties to allow the transaction to be completed. Once the parties are satisfied, then the transaction will be completed on the day specified in the contracts. The outstanding amount is paid and the Sellers will transfer Title.

Post Completion

If there are post completion obligations imposed by the contract then, those should be met. Transfer of title should be registered with the relevant authorities where necessary.

Public Private Partnership



AGBAJE & AGBAJE

Public Private Partnership (PPP) is another route by which foreign investors can enter the Nigerian market. The Nigerian government at all levels (Federal, State and Local), like most developing economies have come to appreciate the vital role infrastructure plays in the socio-economic lives of the people and the government is increasingly using PPP to tackle infrastructure deficit in critical sectors of the nation's economy. PPP is now commonly used for the construction and operation of hospitals, roads, airports, seaports, transportation, waste management and power projects in Nigeria.

The Structure of Public Private Partnership

PPP is a collaboration of the public and private sectors in the financing and development of public infrastructure. It facilitates private sector participation in the implementation of projects and delivery of public services. It also creates a structure for the application of private sector skills and constitutes a financial model that enables the public sector to make use of private finance capital in a way that enhances the government's ability to fill infrastructural gap in the country. The public partners in a public private partnership are usually

government entities, such as ministries, departments, agencies, and state-owned enterprises. The private partners are typically local and/or international entities, which include investors, contractors and operators with technical or financial expertise relevant to the project.

Legal and Regulatory Framework

One of the initial challenges that bedevilled the concept of public private partnerships in Nigeria was the absence of a robust regulatory framework. This has now been resolved and the PPP is regulated at the national level in Nigeria under the Infrastructure Concession and Regulatory Commission Act 2005 (ICC Act). The Act provides the regulatory and institutional framework allowing ministries, departments and agencies of the Federal Government of Nigeria to enter into partnerships with the private sector in financing, construction, operation and maintenance of infrastructure projects.

Further, the National Policy on PPP aims to provide a conducive environment for private sector involvement in the delivery of infrastructure services in Nigeria. Critical to the public private partnership legal framework are the laws establishing institutions empowered by the ICC Act to enter into PPP contracts.

General Principles

The PPP legal and regulatory regime generally sets out the requirements for competition and private sector participation in all public procurement and also specifies the necessary approvals required for public private partnership procurement. The objectives of these laws are to:

- empower government agencies to enter into agreements for the implementation of privately financed infrastructure projects;
- ensure transparency, efficiency and competition in the regulation, licensing and procurement procedures; and

- provide appropriate measures for the safety and integrity of public infrastructure; and ensure that there is an independent and effective dispute resolution process.

A further objective is to ensure that the proposed institutional and financial framework for public private partnership is consistent with the corresponding legislation proposed in each State. However, State Governments are only just establishing legal frameworks for public private partnership in their various jurisdictions. Lagos State is at the forefront of this implementation with the Lagos State Public Private Partnership Law in 2011.

Institutional Framework for Public Private Partnership

The institutional framework governing the public private partnership procurement allocates specific roles and responsibilities to various institutions within the Federal Government of Nigeria, such as the Infrastructure Concession Regulatory Commission and the Public Private Partnership Resource Centre. The latter is responsible for public private partnership project identification, planning, approval, procurement, and implementation. There are also other relevant institutions¹ that govern public private partnership procurement in Nigeria.

Contractual Characteristics of Public Private Partnership

A PPP involves a series of agreements consisting of: Financing Technical and Management Agreements, Shareholders Agreements, Construction subcontracts, Operation subcontracts, Profit Sharing Agreements and other applicable direct agreements.

The private sector partner in view of the capital-intensive nature of infrastructure projects and the risks associated with them when implementing, will typically

form a special purpose vehicle (SPV), which must be incorporated in Nigeria and will carry out its obligations under the contract. The terms of the contract outline the responsibilities of each party and clearly allocate risk depending on the nature and objectives of the project. The contract customarily contains variation mechanisms to accommodate changes during the life of the contract and the tenure typically covers the entire economic life of the asset.

Financial Characteristics of Public Private Partnership

Financing of the public private partnership will depend on the service delivery model adopted but would commonly employ the use of private financing. The private sector partner will raise funds through equity and debt finance including funds of contractors, bank loans, shareholder funds and bond investors.

There are circumstances where the business model does not generate the desired rate of return for the private sector. The public sector in such circumstance may provide a capital subsidy (viability gap funding) to part-finance the project cost and reduce the financial burden faced by the private sector. The public private partnership business model may also provide mechanisms for recovery of capital funding in the form of charges imposed on users, charges recovered from the public-sector budget or charges recovered partly from the sponsoring government department and partly from users

Nigeria is open to foreign investments in all major sectors of the economy. It is the belief of the Nigerian government that strengthening private sector confidence and encouraging private sector-led infrastructure development through PPP will promote the growth of the country's economy and enhance socio-economic development. Despite some of the challenges posed by the complex nature of PPP arrangements, the existence of a legal and regulatory framework does not only portray legitimacy but gives some assurance to would-be investors both local and foreign.

Corporate Finance



AELEX

Overview of Corporate Finance in Nigeria

Corporations require finance for various reasons, the most common being for debt-restructuring, cash flow improvement, new asset purchase, or faster growth. Corporations can raise finance in a number of ways and the method chosen usually depends on what the funds are required for, whether the financing is long term or short term, and the level of risk of the venture.

This section covers the three major ways a corporation can raise finance in Nigeria, namely:

1. Equity
2. Debt
3. Merger

Equity Financing

The method chosen by a company to raise capital through equity will depend on a number of factors including; the amount of money required by the company, the time available and whether the company is private or public. In Nigeria, a

private company cannot invite the public to subscribe for its shares or debentures. This means that a private company can either raise equity capital from its subscribers, through private placement or any other means of private equity financing. It can also convert to a public company in order to offer shares to the public.

Public companies are permitted under Nigerian law to raise capital through any of the following means:

The Initial Public Offering

A company can raise capital at the time of its first listing on an exchange i.e. an IPO. The main exchange in Nigeria is the NSE which is regulated by the SEC. For an IPO a company must offer new shares in the company to the public. An IPO can also be achieved by offer of existing shareholders' shares to the public. However, the money raised from such offer goes to the company's shareholders. Equity capital can also be raised through a hybrid offer involving a combination of an offer for subscription and an offer for sale. The shares are then listed on an Exchange.

Alternative Listing and Raising Additional Capital

A Nigerian company may also list its shares on the National Association of Securities Dealers (NASD) Over-the-Counter (OTC) Securities Exchange. NASD is a public limited liability company regulated by the SEC, it provides an over-the-counter (OTC) platform for the free trading of equities of companies not listed on the NSE (unquoted public companies).

Upon admission into the NASD, companies are ranked and placed into one of two categories - Blue or Pink. Companies in the blue category must have been in operation for a minimum of five years, provide quarterly and annual audited accounts, maintain a minimum shareholder's equity of 50% of the company's paid up share capital and an average daily trade of NGN 25,000.

A company cannot be admitted to the NASD if it is already listed on the NSE.

Raising Additional Capital

A listed company may raise subsequent equity capital from the NSE through an offer for subscription, rights issue or placing. The ISA permits a company to issue additional securities within six months of a duly registered public issue on the same prospectus.

- **Offer for subscription** – is an offer by the company to the public of its unallotted shares. Purchasers of these shares become part owners of the company and as such share in the risks/profits of the company.
- **Rights issue** – is an offer of new shares or other securities made on a pre-emptive basis to existing shareholders of a company in proportion to their shareholdings.
- **Placing** – is the offer of shares to pre-selected investors. A company is required by the SEC to show evidence that placing is the only practical option of achieving the company's objectives. The shares must also not be offered to more than 50 subscribers and the aggregate number of shares to be offered through placing must be 30% of the company's existing issued and paid-up share capital before the offer.

Debt Financing

Debt is another means by which companies can raise finance. CAMA recognises that companies may borrow money and charge their assets as security for such debt. Debt financing can be raised using debentures and bank loans.

Debentures

A debenture is a written acknowledgement of the terms and conditions of indebtedness and includes debenture stock bonds and other securities of a company whether constituting a charge on the assets or not. A debenture can be perpetual, redeemable, convertible, secured or unsecured. CAMA allows for

convertible debentures which are debentures that can be converted into shares in the company subject to the terms of the debenture contract. Debentures are usually freely transferable.

Both private and public companies can issue debentures, but only public companies can issue corporate bonds which can be listed on the Nigerian Stock Exchange or the FMDQ OTC Securities Exchange (a debt capital OTC Exchange) to provide enhanced liquidity to the holders of the bond. The procedure for the issuance of bonds is under the regulatory purview of the SEC. The method of issuing a bond can either be through a public offering or a private placement. Corporate bonds typically offer higher interest rates than government bonds to take into account the riskier nature of corporate bonds.

Bank Loans

Getting a loan from a bank is also another way a company can raise money. Banks will conduct due diligence on the proposed borrower company to ensure the transaction will be legally binding and to determine the credit risk of the borrower. Where the amount to be borrowed is a very large sum, a syndicated loan structure may be used to avoid overexposure to one borrower by a single bank. In Nigeria, borrowers are typically required to provide collateral for bank loans.

Compared to private companies, public companies are usually able to use debt to obtain finance on more favourable terms.

Merger

Companies might merge to gain greater profits and benefit from better lending rates. The SEC is the primary body charged with the responsibility of considering the desirability of a merger and weighing this against public interests.

Industry specific regulations

Depending on the industry that a corporation operates in, other regulations may affect the raising of finance. Banks looking to raise capital have to evaluate the Banks and other Financial Institution Act 1991 and the various CBN circulars in order not to be in breach of any regulations. Other laws that may affect corporate finance include the Pension Reform Act 2004, and the National Insurance Commission Act 1997. Investors are advised to obtain specific legal advice based on the sectoral interest.

Intellectual Property



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Intellectual Property

Intellectual Property (IP) is intangible property resulting from creativity and in respect of which there is legal protection from unauthorised use by third parties. The types of IP recognised under Nigerian law are trademarks, patents, industrial designs and copyright.

Trademarks

Foreign trademark registration does not give protection in Nigeria, therefore, for a mark to enjoy statutory protection, it must be registered in Nigeria. The statutes which regulate the registration and use of trademarks in Nigeria are the Trademarks Act 1990, the Trademarks Regulations 1967 and the Merchandise Marks Act 2004. An application for registration must be made to the Registrar of Trademarks. A trademark registration is valid for an initial period of seven years but can be renewed for a further period of up to 14 years.

Patents

The law which regulates the registration and use of patents in Nigeria is the Patents and Designs Act. For an invention to be patentable in Nigeria, it must be new, result from inventive activity and be capable of industrial application. It may also be a new improvement on a patented invention. A patent cannot be obtained in respect of plant or animal varieties; essential biological processes for the production of plants or animals; or any invention which would be contrary to public order or morality if published or exploited.

Like trademarks, foreign patent registration does not give protection in Nigeria. Therefore, for an invention to enjoy statutory protection, a patent must be obtained in Nigeria in respect of it. It is however possible to validly claim foreign priority from an earlier application filed in one of the convention countries listed in the Patents and Designs (Convention Countries) Order (the Order) or from an application filed pursuant to the Patents Cooperation Treaty. There are currently 76 convention countries listed in the Order

An application for a patent must be made to the Registrar of Patents. It should be noted that there is no substantive examination of patents in Nigeria and the law expressly provides that a patent is granted without guarantee of its validity. By implication, it is possible to obtain a patent for an unpatentable invention and such patent will remain valid until it is invalidated by the courts. As such, defensive registration is advisable. The duration of a patent is 20 years from the date of filing, subject to the payment of the prescribed annuity.

Industrial Designs

The Patents and Designs Act also regulates the registration and use of industrial designs in Nigeria. Any combination of lines or colours or both, and any three-dimensional form (whether or not associated with colours) is recognised as an industrial design under Nigerian law. However, the design must be intended by

the creator to be used as a model or pattern to be multiplied by an industrial process and not solely to obtain a technical result. An industrial design will be registrable if it is new and is not contrary to public order or morality. An application to register an industrial design must be made to the Registrar of Patents and Designs. Registration is valid in the first instance for five years and can be renewed for two further consecutive periods of five years.

Copyright

The Copyright Act regulates the use and commercialisation of copyright in Nigeria. In Nigeria, copyright is not conferred by registration, but it is automatically conferred on works which are eligible for copyright by virtue of the provisions of the Copyright Act. However, in fulfilling its mandate of creating a databank of authors and their works, the Nigerian Copyright Commission (NCC) established a voluntary notification process by which authors can notify the NCC of their works. Works eligible for copyright include: literary works, musical works, artistic works and cinematograph films where the copyright will be valid for 70 years after the author's death. In the case of sound recordings, and broadcasts, any copyright will be valid for 50 years after the making of the first recording or the broadcast.

Taxation of Foreign Investment



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Specialist tax advice should be sought at an early stage when acquiring a business or company or investing in Nigeria. The following is intended to be an overview of the main relevant tax areas.

Before a foreign company can commence business in Nigeria it must first incorporate a separate entity in Nigeria. In some exceptional cases a foreign company may be granted exemption from incorporation upon fulfilment of certain conditions, otherwise the operation of a branch is not permitted. Companies in Nigeria may be limited by shares, limited by guarantee or registered as an unlimited liability company.

The table below summarises the taxation regime in Nigeria as it applies to foreign investors.

Foreign entities carrying on business in Nigeria	<ul style="list-style-type: none"> Under CAMA, every foreign entity incorporated outside Nigeria must incorporate a separate entity in Nigeria before commencing business. In exceptional cases a foreign company may be granted exemption from incorporation upon fulfilment of certain
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	<p>conditions, otherwise the operation of a branch is not permitted.</p> <ul style="list-style-type: none"> • Under CAMA, a company may be registered as a company limited by shares, limited by guarantee or as an unlimited liability company.
Tax system	<ul style="list-style-type: none"> • The tax liability of a Nigerian company is determined by its worldwide income irrespective of whether the income was brought into or received in Nigeria. • A foreign company is subject to tax on profits deemed to be derived from Nigeria where- <ul style="list-style-type: none"> ○ the company has a fixed base in Nigeria; ○ the company does not have a fixed base but habitually operates a trade or business in Nigeria; ○ the trade or business involves a turnkey project; and ○ the tax authority deems that a transaction between the company and a related entity is one not carried out at arm's length.
Tax registration	<ul style="list-style-type: none"> • All companies are required to register with the Federal Inland Revenue Service ("FIRS") for purposes of corporate income tax and value added tax. • Companies are also required to register with the relevant State Board of Inland Revenue Service ("SBIR") in each of the States where the company has staff - for employee tax purposes.
Corporate tax filings	<ul style="list-style-type: none"> • Newly incorporated companies are required to file tax returns within 18 months of incorporation or 6 months after the end of the accounting year, whichever is earlier. • Companies in business for more than 18 months are required to file their tax returns not more than 6 months after the end of their accounting year.

	<ul style="list-style-type: none"> • Foreign companies are required to file tax returns in respect of income derived from Nigeria.
Capitalisation	<ul style="list-style-type: none"> • Capitalisation of a company with equity is tax neutral (though stamp duty and filing fees apply in respect of the documents used to effect the capitalisation). • Interest payments are subject to Withholding Tax (see below) at the rate of 10%. • However, interest payable on foreign loans is exempt from withholding tax in the manner prescribed below: <ul style="list-style-type: none"> ○ Loans with repayment period of at least 7 years, including moratorium, with a grace period of not less than two years are entitled to 100% exemption; ○ Loans with repayment period of between 5 - 7 years, including moratorium, with a grace period of not less than 18 months are entitled to 70% exemption; and ○ Loans with repayment period of between 2 - 4 years, including moratorium, with a grace period of not less than 12 months are entitled to 40% exemption.
Tertiary Education Trust Fund Tax (“TET”)	<ul style="list-style-type: none"> • All companies incorporated in Nigeria are required to pay 2% of their assessable profit as TET. • Foreign companies are not required to pay TET.
Capital Gains Tax (“CGT”)	<ul style="list-style-type: none"> • CGT is imposed at the rate of 10% on the total chargeable gains on the disposal of chargeable assets. • Gains derived from the disposal of stocks and shares are not subject to CGT.

	<ul style="list-style-type: none"> Gains made on the disposal of any asset used for the purpose of a trade or business are not subject to CGT provided that the gains are used to replace the asset sold. 		
Withholding Tax ("WHT")	WHT Rate (%)		
	Payment	Companies	Individuals
	Dividends	10%	10%
	Interest	10%	10%
	Royalties	10%	5%
	Rent	10%	10%
	Director's fee	N/A	10%
	Management fees	10%	5%
	Building or constructions	5%	5%
	Contracts other than sales in the ordinary course of business	5%	5%
	Dividends	10%	10%
	Interest	10%	10%
	Royalties	10%	5%
	Rent	10%	10%
	Director's fee	N/A	10%
	<ul style="list-style-type: none"> Foreign companies are not required to deduct WHT on payments made to Nigerian residents. Sales made in the ordinary course of business are exempt from WHT. Dividend, interest, royalty, rent paid to a foreign company will be liable to WHT, however other payments to a foreign company are not liable to WHT unless the foreign company is itself liable to Nigerian tax. 		
Double Tax Agreements ("DTAs")	<ul style="list-style-type: none"> Nigeria has DTAs in force with Belgium, Canada, China, The Czech Republic, France, Italy (limited to shipping and air businesses), The Netherlands, 		

	<p>Pakistan, Philippines, Romania, Slovakia, South Africa, Spain, and the United Kingdom.</p> <ul style="list-style-type: none"> • Residents of these countries enjoy a reduced WHT rate of 7.5% on investment incomes (dividend, rent, interest and royalty) derived from Nigeria.
Losses	<ul style="list-style-type: none"> • Losses may be carried forward indefinitely.
Deductibility of Expenses	<ul style="list-style-type: none"> • A company may, for the purpose of ascertaining its tax, deduct from its profits, all expenses wholly, exclusively, necessarily, and reasonably incurred in the production of such profits. • Capital Allowances: <ul style="list-style-type: none"> ○ Capital allowances are granted on the incurring of qualifying expenditure that is used solely for the purpose of the business. ○ It includes initial and annual allowances. The initial allowance can be claimed only in the year the asset was acquired. Annual allowance on the other hand can be claimed, based on the remainder after deducting the initial allowance from the cost of the asset and it is spread over the tax life (including the first year) of the asset until the cost of the asset is reduced to a book value of NGN 10.00
Tax incentives	<ul style="list-style-type: none"> • Pioneer status: <ul style="list-style-type: none"> ○ Under the Industrial Development (Income Tax Relief) Act, an industry or a product may be declared a pioneer industry or product if (i) the industry is not carried on in a scale suitable to the economic development of Nigeria; (ii) there are favourable prospects of further development; or (iii) it is expedient and in the

	<p>public interest to encourage the development of such an industry in Nigeria.</p> <ul style="list-style-type: none"> ○ Pioneer status is granted to companies to encourage development or establishment of an industry and to enable a company in such industry or manufacturing such product to make a reasonable level of profit within its formative years. ○ An application may be made by a Nigerian company for the designation of its activities as a pioneer industry. ○ A company with pioneer status is entitled to a tax holiday of 3 years, which may be renewed for a further 2 years. Dividends are not subject to tax in the hands of the shareholders of the company enjoying the pioneer status. ○ In addition, capital allowances can be carried forward and utilised at the end of the tax relief period. <ul style="list-style-type: none"> ● Free trade zones: <ul style="list-style-type: none"> ○ Enterprises operating within a Free Trade Zone (FTZ) are exempt from all Federal and State Government taxes, levies and rates.
Transfer Pricing	<ul style="list-style-type: none"> ● The Transfer Pricing Regulations 2012 (the Regulations) complement the general anti-avoidance provisions of the tax laws and establish the arm's length principle as the standard for determining the arm's length pricing of connected party transactions. The Regulations shall be applied in a manner consistent with the arm's length principle in Article 9 of the UN and OECD Model Tax Conventions on Income and Capital for the time been in force and the OECD Transfer Pricing Guidelines for Multi-national

	<p>Enterprises and Tax Administrations approved by the Council of the OECD.</p> <ul style="list-style-type: none"> ● “Connected persons” are defined to include persons that are business associates where: <ul style="list-style-type: none"> ○ one enterprise participates directly or indirectly in the management, control or capital of the other; or ○ the same person/(s) participate(s) directly or indirectly in the management, control or in the capital of both enterprises.
Thin Capitalisation	<ul style="list-style-type: none"> ● Nigeria does not have Thin Capitalisation rules. However, excessive interest charged on transactions between connected parties may be rejected by the tax authority as it is expected that, interest on transactions between connected parties would reflect the arms-length principle.
Employees Tax	<ul style="list-style-type: none"> ● Employers are required to deduct the personal income tax due on all emoluments paid to their employees and remit to the appropriate tax authorities, under the Pay As You Earn scheme.
Employees Compensation Scheme	<ul style="list-style-type: none"> ● Employers are required to contribute 1% of the total monthly payroll to the Nigeria Social Insurance Trust Fund (NSITF) for purposes of the Employee's Compensation Scheme (ECS), which compensates employees (or their dependants) in the event of injury, disability or death.
Contributory pension scheme	<ul style="list-style-type: none"> ● Under the Pension Reform Act 2014, a private sector employer with 15 or more employees must establish a contributory pension scheme for the benefit of their employees. ● The rate of the contribution is a minimum monthly contribution of 10% of the employee’s total

	<p>emoluments by the employer, and a minimum of 8% by the employee.</p>
<p>Industrial Training Fund (“ITF”)</p>	<ul style="list-style-type: none"> • Employers in industry or commerce are required to contribute 1% of their annual payroll to the ITF where they: <ul style="list-style-type: none"> ○ have five or more employees or an annual turnover of at least NGN 50 million; ○ bid for or solicit contracts, businesses, goods and services from public and private establishments; ○ are situate in the free trade zone and require approval for an expatriate quota; and/or ○ utilise customs services for import and export. • The ITF may make a refund of up to 50% of the contributions made by an employer, upon satisfaction that the employer’s training programmes are in accordance with the ITF’s reimbursement schemes.
<p>Stamp duty</p>	<ul style="list-style-type: none"> • Stamp duty is either chargeable at fixed rates or ad valorem on all written instruments (except specifically exempted), including agreements, awards, bonds, leases and receipts. • Stamp duty is not levied on the transfer of shares or stocks but is levied on incorporation or increase in share capital at a rate of 0.75% of the authorised share capital. Filing fees are also applicable. • A rate of 1.5% is payable as stamp duty on the transfer of immovable property.
<p>Value Added Tax (VAT)</p>	<ul style="list-style-type: none"> • Under the VAT Act 2007 (as amended), VAT is levied on the supply of taxable goods and services except exported goods and services.

	<ul style="list-style-type: none"> • The rate of the tax is 5%. • Foreign Companies are exempt from paying VAT on goods and services purchased/exported from Nigeria. They are however required to register for, and charge VAT on any invoice in respect of goods/services provided to a Nigerian entity. The Nigerian recipient is then expected to withhold the VAT and remit it to the FIRS.
VAT registration	<ul style="list-style-type: none"> • The VAT Act does not specify any revenue threshold for registration purposes. • A Nigerian company is required to register for VAT within six months of commencing business. A foreign company carrying on business in Nigeria shall register for VAT using the address of the Nigerian entity with whom it has a subsisting contract, as its address for purposes of correspondence relating to the tax.
VAT Returns	<ul style="list-style-type: none"> • VAT returns are required to be filed by the 21st day of the month following the month of the VAT transaction.

FinTech Sector



TRITON STRATEGIES

FinTech

The current global phenomenon, which is infusing technology into every facet of business activity, colloquially known as “FinTech”, is also rapidly gaining grounds in Nigeria. The FinTech Association of Nigeria was established to articulate and aggregate the interests of FinTech in Nigeria, and more specifically to engage with relevant regulators in order to develop the sector further. Many Nigerian based FinTech companies are emerging and seeking to raise capital in the international and local market space. Examples include Paga (money remittances), Flutterwave (payment infrastructure service), Konga (Online shopping) Paystack, (payment infrastructure service) and Jumia (online shopping).

Aside from financial, business and consumer advances, Fintech is also being used to help alleviate poverty and help governments reach out to remote citizens with little access to traditional technology. The two most high profile are financial inclusion (reaching out to the unbanked to strengthen the economy overall) and providing government services (citizenship, voting etc) to help governments

effectively plan service provision. Mobile phone networks have been instrumental in leveraging these services as mobile and solar powered devices provide access to citizens in remote areas.

There is currently no separate regulatory regime for FinTech in Nigeria and companies within the FinTech space will be subject to the same regulatory requirements as other companies.

Taking deposits or trades securities for clients for a FinTech

By virtue of the provisions of the Banks and other Financial Institution Act 1991, only persons duly licensed by the CBN are authorised to advertise for and receive deposits from the general public. Although, there is currently no specific licence issued to FinTech companies for the acceptance of deposits in Nigeria, where a FinTech company intends to receive deposits from the public as part of its business, it may need to be licensed as a commercial bank or other financial institution by the CBN. FinTech companies involved in other financial services such as international money transfers will also be required to obtain a licence from the CBN and will typically utilise accounts with licenced banks to conduct their business. Additionally, companies involved in the provision of mobile money services are required to be licenced by the CBN. Furthermore, such companies will need to obtain a licence from the Licence Framework for Value Added Services issued by the Nigerian Communications Commission.

Regulation of Cryptocurrencies

Both the CBN and Securities and Exchange Commission (SEC) have indirect regulatory oversight powers over cryptocurrencies in Nigeria (particularly where local banking infrastructure is relied upon, or where cryptocurrencies are offered as securities to the public).

The CBN is the main regulator of the financial services industry in Nigeria. It also has general regulatory powers over the issuance and control of legal tender

(Naira) in Nigeria and any notes, coins, documents or tokens *which are likely to pass as legal tender*. The CBN has acknowledged that blockchain technology and derivatives, such as cryptocurrencies are and will continue to be relevant and has confirmed that it is currently evaluating and developing a framework for the regulation of cryptocurrency in Nigeria in consultation with other relevant industry regulators and stakeholders.

Cryptocurrencies are largely viewed as tradeable securities in Nigeria and are not yet generally utilised as currency. In 2017, the CBN issued a circular to all banks and financial institutions on the emergence and use of cryptocurrency declaring that virtual currencies such as bitcoin, ripples, litcoin, onecoin etc are not legal tender in Nigeria. The circular warned banks and other financial institutions on the money laundering/terror financing risks of the use of such untraceable virtual currencies, particularly as it relates to the intersection of virtual currencies with Nigeria's established financial system. The circular specifically prohibits banks and other financial institutions from using, trading or transacting in any virtual currencies and mandates the banks to develop and implement effective anti-money laundering/fraud control mechanisms in compliance with Know Your Client (KYC) and monitoring regulations in relation to customers that are virtual currency exchangers. It also requires such institutions to monitor, discontinue and report any suspicious transactions involving money laundering in Nigeria.

Setting up a Fintech Company in Nigeria

There is a growing Fintech industry in Nigeria. The most common corporate form in Nigeria for a Fintech is the limited liability company, registered by the CAC. A limited liability company may be set up at the Corporate Affairs Commission within five business days. There are no specific requirements for a director of a Fintech company to be professionally qualified.

Oil & Gas Sector



GEORGE ETOMI & PARTNERS

Nigeria is a major global oil producer and reserves holder, with the 11th largest proven oil reserves in the world, holding 2% of total global oil reserves. Nigeria has also sustained exploration activities in a bid to grow the nation's crude oil reserves to 40 billion barrels by the year 2020 from 37.2 billion barrels in 2017. The country also has the largest proven natural gas reserves in Africa and the ninth largest in the world with an estimate of more than 197 trillion cubic feet of proven gas reserves, a lot more than the oil reserves.

Nigeria's Oil reserves are largely concentrated in the Niger Delta, which is one of the world's most prolific oil-bearing sedimentary basins. There are seven sedimentary basins in and around Nigeria: Calabar, Niger Delta, Benue Trough, Lake Chad, Soot, Anambra and Dahomey (Benin). In 2017, the national oil company, the Nigerian National Petroleum Corporation (NNPC) executed a tripartite agreement with exploration companies for the development of the Anyalu and Madu fields in the Niger Delta under Oil Mining Licence, OML 83 and OML 85, offshore Nigeria which are expected to generate 193 million barrels of crude oil and an additional 800 billion cubic feet of gas.

While some other prolific reserves have already been discovered offshore of the Niger Delta and in the Nigeria-São Tomé and Príncipe joint development zone (JDZ), efforts are similarly being intensified to explore for oil in the Lake Chad basin in the northern region of the country.

Nigeria does not import crude oil or gas as the demands for both are met from domestic production. However, Nigeria imports refined petroleum products - kerosene, diesel and premium motor spirit (PMS), since the country does not have sufficient refining capacity to meet its needs.

Regulations Governing the Oil and Gas Sector

The statutory framework regulating the sector is listed below:

- The Petroleum Act 1969 (PA): This is the main legislation that regulates the natural gas exploration and production.
- The National Petroleum Policy of 2017: This policy concentrates on oil and oil products. Under the policy, petroleum is defined to cover all petroleum related products, including crude oil, petroleum products and other derivatives of crude oil, natural gas, and various gas liquids and condensates.
- The National Gas Policy of 2017: This policy addresses the gas sector alone and intends to move Nigeria from an oil-based to an oil and gas-based industrial economy.
- These policy documents require that projects for natural gas production must be subjected to The Environmental Impact Assessment Act (EIA) before coming on stream.
- The National Environmental Standards and Regulations Enforcement Agency Act (NESREA) provides general environmental standards to be met in industrial processes inclusive of the oil and gas industry.
- Nigerian Oil and Gas Industry Content Development Act

- The Land Use Act 2004 (LUA) regulates the use and ownership of land.
- The Petroleum Profits Tax Act 2004 (PPTA) regulates the taxation of upstream gas production;
- The Companies Income Tax Act 2004 (CITA) regulates the taxation of downstream gas projects;

The Ministry of Petroleum Resources has general oversight responsibilities of the sector, while the Department of Petroleum Resources (DPR) is the regulatory arm of the Ministry. The Federal Ministry of Environment also has oversight over the environmental aspects of the production, transmission, distribution and supply of natural gas. The Minister of Petroleum Resources has the power to authorise the holder of mineral rights or any assignment or rights to transfer assets within the industry. Each exploration and production activity, including drilling location and the quantity of gas to be produced, will require permitting and reporting obligations from the producer.

Investors in the sector are generally required to provide evidence of both their financial and technical capabilities in order to participate in petroleum operations, which might entail obtaining letters of credit/guarantees from reputable financial institutions.

Investing in the Sector

The oil industry in Nigeria is traditionally divided into an upstream and a downstream sector. The upstream sector includes the exploration, drilling and production of crude oil while the downstream sector comprises of refining, storage, marketing and distribution of petroleum products. Between the upstream and downstream sectors, is the issue of transportation (getting the crude oil to the market place), which could be through pipelines, rail, barge, oil tanker and trucks. This sector is often referred to as the midstream sector.

There is considerable government involvement in both the regulatory and commercial aspects of the industry. The right to explore and extract petroleum is granted by the government through the DPR. Companies that wish to engage in petroleum operations in Nigeria are required to be incorporated in Nigeria and subsequently register with the DPR (the governmental agency that issues permit for oil exploration and production activities, as well as oil service activities). Fees payable depend on the category of operations for which the company applies.

The preferred mode of commercial operation in the industry is the Production Sharing Contract (PSC). The NNPC signs PSCs with international oil companies (IOCs) who are then encouraged to partner with indigenous oil companies with a view to building long-term indigenous competencies in the Nigerian oil and gas industry. This is a win-win situation, as indigenous operators are given first consideration for the award of licenses and contracts in any project in the oil and gas industry.

A foreign investor with expertise in the industry may also wish to engage by acquiring a participating interest in a particular Oil field. In such cases, the investor will become the financial and technical partner in the field. There are a few agreements that are necessary for the parties to secure their relationships. This will include but not be limited to a Farm-in/Farm-out Agreement, Sales and Purchase Agreement, Joint Operating Agreement among others.

Any transfer of participating interest must be approved and registered with the DPR, otherwise the buyer of such interest will not be recognised as the new owner by the Nigerian Government.

Due Diligence

It goes without saying that investment in this sector is often very substantial hence the need for the buyer to thoroughly investigate the seller's business affairs and its assertions cannot be over emphasised. Usually the data room in a typical

oil and gas transaction will contain 3 types of data: Technical, Financial and Commercial/Legal.

The technical team of the acquirer would have to assess the state of the assets in question and 3D seismic data and its analysis are often necessary to ensure that a particular oil well contains as much crude oil as indicated by the Seller. It is also important to ascertain that any Oil reserves along the boundary line of an asset have not be drained off by adjoining field owners.

The Financials should also be properly investigated by the buyers. Three years audited account etc will be necessary to assess the financial status of the target company.

As for Commercial/Legal data, it will be necessary to appoint a local professional agent (usually lawyers) who specialises in this field to carry out a detailed due diligence on this target company or assets as the case may be. This may include a visit to the DPR records where all the relevant regulatory information is kept. This information will include but not be limited to the relevant licenses, breaches of any conditions imposed on the licenses, community disputes and records of environmental disasters and spillages. The local agents will also carry out an investigation in the CAC as to the ownership of the Seller's company and whether there are registered charges on the Assets of the Seller among other things. It is also important to ensure that the local advisers have sight of the Shareholders Agreement as well as all loan facilities agreements that may have a bearing on the target assets. All on-going or pending litigation, environmental liability, community relations issues are to be investigated, as any of these findings may affect the ultimate decision of the buyer or the price of the asset.

Registration requirements

When foreign investors acquire interests in a Nigerian company, the local company must register such acquisition with the Nigerian Investment Promotion

Commission (NIPC) and must have a minimum authorised share capital of NGN10 million. The company must also comply with the requirements of Central Bank of Nigeria by obtaining a Certificate of Capital Importation of at least US\$300,000 in cash or money's worth, e.g. in the form of machinery. Where the company is quoted on the NSE, then the SEC must approve the capital investment or acquisition transaction.

Nigeria's oil and gas industry is increasingly well regulated. Together with sustained reform efforts by the present Federal Government, to liberalise the various segments of the industry and to promote transparency, the investment environment is expected to develop even further over time. The federal legislature has recently passed the Petroleum Industry Governance Bill to enhance the governance of the sector and promote private participation.

Power Sector



GEORGE ETOMI & PARTNERS

Nigeria has over 180 million people, which makes it the seventh largest in the world. The country's installed power capacity is about 12GW but what reaches the last mile distribution segment in the value chain is about 3-4GW, creating a huge supply gap within the Nigerian Electricity Supply Industry (NESI) and enough room for infrastructure upgrade, given that the current state of power infrastructure remains weak and dilapidated.

Nigeria is endowed with abundant fuel sources such as wind, solar, hydro and gas, which if sufficiently harnessed can power the West African Region. The government of Nigeria acknowledges the critical importance of electricity to economic growth and national development and took the decision to reform the NESI, resulting in the unbundling and privatisation of the sector.

Additionally, the government of Nigeria has undertaken reforms in other segments of the energy industry, in particular the gas industry, to unlock its potential. The National Gas Policy was initiated to diversify gas production and expand the gas market whilst also addressing the gas to power shortages. It is

envisaged that these reforms will effectively boost the power industry and ultimately drive industrialisation of the economy.

Investing in Power Sector of Nigeria

With the privatisation of the NESI, there are abundant investment opportunities across the electricity value chain. Although the Federal Government of Nigeria has demonstrated willingness to allow private operators to manage the transmission grid infrastructure through a management contract with Manitoba Hydro, it still retains 100% ownership. It is anticipated that the transmission grid infrastructure will be fully privatised by the government at some point in the future.

Although there are still issues (electricity theft, gas supply issues, and transmission constraints) stemming from the inadequacy of the regulatory framework, efforts are being made by the government to aggressively address some of them through both financial and regulatory interventions.

In acquiring and investing in the NESI, investors should consider the legal, regulatory and fiscal regime that applies to the power sector, particularly with regards to thermal-based projects in order to take advantage of the enormous investment opportunities.

Legal and Regulatory Framework

The Electric Power Sector Reform Act 2005 (EPSRA) is the key legislation in the NESI. It established the basis upon which private companies can participate in the generation, transmission, distribution and retail sale of electricity. Typically, the EPSRA provides the legal framework for the power sector business in terms of regulating the undertakings of power generation, transmission and distribution of electricity in Nigeria. The EPSRA provides for the following:

- The creation of a holding company for the assets and liabilities of the National Electric Power Authority (NEPA);
- The unbundling of the Power Holding Company of Nigeria (PHCN) to take over the assets, liabilities and staff of the PHCN;
- The establishment of the Nigerian Electricity Regulatory Commission (NERC);
- The basis of a competitive electricity market; and
- The basis for determining tariffs, customer rights and obligations and other related matters.

Applying for a Licence

Investors wishing to operate an undertaking for on-grid supplies in excess of 1MW are required to be licensed by the Nigerian Electricity Regulatory Commission (NERC). The licence is valid for 15 years and subject to renewal. However, one of the significant commercial documents, the Power Purchase Agreement (PPA) is typically for a period of 20 years.

Below are the requirements that are necessary for an investor to consider.

Legal Requirements

- certificate of incorporation and memorandum and articles of association;
- environmental impact assessment report and approval;
- documentation on registered title for the land where the project will be sited and;
- evidence of permit or approval from other relevant authorities relating to the project.

Financial Requirements

- Tariff methodology and calculation;
- Short-term and medium-term cash flow projections; and

- Funding arrangements, investment plans and risk management strategy.

Technical Requirements

- Details of experience in and knowledge of the electricity industry; and
- Summary of skills and experience of Directors and management.

Specific requirements for new power stations

- Location map to scale - showing roads, railway lines, transmission lines, rivers and reservoirs if any;
- For a hydro station, map should show proposed dam, reservoir area, water conductor systems, fore bay, powerhouse, any villages, forestland, and agricultural land
- Fuel supply arrangements (contractual gas and oil pipeline, if any)
- Water sources for the operation of the power plant;
- On the site map the fuel delivery point, fuel storage space and water pipeline. Liquid waste disposal areas must be clearly delineated.
- Power Station Information: total generating capacity (MW); number of generating units; size of generating units (MW), fuel type; annual generation; running regime; station load and factor; ancillary service to be provided by station; and information on waste management and disposal.

Nigerian Investment Promotion Commission Act

Foreign power sector investors are required by NIPCA to apply to NIPC to obtain necessary business permits and documentations to establish their entry into Nigeria for power sector investment.

Beyond the provisions in EPSRA, other laws and regulations exist detailing provisions that allow private investors tap into the huge investment opportunities that exist in the power sector. Some of these regulations include: the NERC

Eligible Customer Regulation 2017 and the NERC Investment in Electricity Networks Regulation 2015.

In addition, there are contractual obligations governing the terms of engagement between parties in a power project. These terms are typically detailed in a Power Purchase Agreement (PPA) or a Bilateral Trading Agreement.

Power Purchase Agreement and Project Documentation

In packaging a power project, it is pertinent for the private sector investor to take account of the PPA which is typically a standard form of agreement which comprehensively provides the terms and conditions of the construction, testing, commissioning and operation of the project/power plant and the rights and obligations of the seller/producer and the buyer.

In ensuring the bankability of a PPA, any investor must be mindful of the following terms:

- **Tariff/Tariff Structure:** There should be a clear tariff structure; a dual pricing mechanism is usually adopted. The first is Capacity Charge, to cater to fixed costs; whilst the second is the Energy Charge, which takes care of variable costs such as fuel costs and actual energy taken by the buyer. In a situation where energy is not dispatched but capacity exists, the capacity charge would continue to be incurred. This ensures that there will be constant revenue/cash flow, which is comforting to investors in a power project.
- **Deemed Commissioning:** In a PPA, deemed commissioning could be achieved when certain milestones have been reached. Once the agreed milestones have been reached, Capacity Charges start to be incurred by the off-taker. The purpose is to ensure a steady revenue stream for the project to start receiving income and for repayments of debts including any interest.

- **Buy-out/Buy-out Prices:** Termination clauses in PPAs may lead to buy-outs by the purchaser of power which may be triggered by either party depending on the event of termination. Lenders prefer that all outstanding debt be included in the buy-out price.

Put and Call Option Agreement (PCOA)

In the event of an early termination of the PPA, the PCOA allows the project company to ‘put’ the plant (or its shares) up for purchase by the government (including in circumstances where there has been a prolonged gas supply failure). In these circumstances the government is obliged to pay a ‘purchase price’, which, at a minimum, covers the outstanding debt.

Gas Sale and Aggregate Agreement

This is an agreement for the sale and purchase of gas between gas suppliers and the Generating Companies (GENCOs). In Nigeria however, the Gas Aggregation Company of Nigeria (GACN) acts as an intermediary between the gas suppliers and purchasers. The company ensures that gas is supplied to strategic sectors in the economy and ensures fulfilment of the domestic gas supply obligations of the natural gas producers.

The types of Clauses usually found in a Gas Sale and Aggregate Agreement are:

- **Take or Pay** – obligates a buyer to take a pre-determined quantity of gas or pay for the same if not taken. For the seller, this is to ensure a regular source of income, usually for repayments of loans and to meet other obligations such that it is not in breach of its obligations under other contracts, where a buyer fails, neglects or refuses to take a pre-determined quantity of gas.
- **Shortfall Gas** – the gas supplied after the original contracted quantity nominated by the buyer is supplied and such original quantity is less than

the nominated quantity. Therefore, the gas supplied to meet the quantity agreed upon in the GSAA is termed Shortfall.

- **Gas Specification** –the general rule is that gas must conform to a contract specification. Where the gas does not meet the specification, the buyer would negotiate a right to reject the gas or take the gas at a discounted price. Where the gas is rejected because it is “off spec” any gas eventually supplied could be termed as shortfall gas, as the seller would be deemed as not meeting its obligations to supply the nominated quantity on the agreed date.
- **Make-Up Gas** –In a gas buyer’s contract there are often terms that allow the buyer to take make-up gas in contract periods after it has been paid for but not taken. There may be a limit to the amount of make-up the buyer can recover in any given period. Over time this can lead to a gas surplus/reserve situation where the gas purchaser can start to take gas free (only paying the difference between the amount already paid and the current price, where there has been a price increase) up to the amount of the “make-up” outstanding from the previous years during the life of the contract.

Tax benefits from investing in Oil and Gas

Company Income Tax Act

The Company Income Tax Act (CITA) provides tax incentives for companies engaged in gas utilisation. These include a three-year income tax holiday with possible renewal for additional two years; accelerated capital allowance after the tax-free period and; tax-free dividends during the tax-free period.

In view of the importance of power to the national economy and the efforts being made by the government to encourage investments in power sector generation, the Minister of Trade and Investment lists the utilities services industry as a

pioneer industry in the Industrial Development (Additional List of Pioneer Industries) Notice and specifies “independent power generation utilising gas, coal and renewable energy sources” as a product with Pioneer Status. Products with this status benefit from a plethora of tax incentives such as an income tax holiday for up to five years, and exemption of dividends paid out of pioneer profits from Withholding tax.

Value Added Tax Act

Under the Value Added Tax Act, plants, machinery and equipment purchased for the utilisation of gas in downstream petroleum operations are classified as goods and services that are exempt from the application of VAT.

Customs, Excise Tariff, etc Consolidation Act (CETA)

Machinery, equipment or spare parts imported into Nigeria by industrial companies engaged in exploration, processing or power generation through the utilisation of Nigerian gas, for its operations are exempt from CETA.

Power Sector Recovery Program

In addressing the current gaps in the power sector, the Federal Government has embarked on a recovery programme to position the sector for the needed investments. The Federal Government of Nigeria launched a Power Sector Recovery Program (PSRP) to develop an accelerated recovery path for the power sector, which has been plagued by liquidity crisis. It is estimated that US\$29.3 Billion is lost to the national economy annually because of inadequate power supply.

The Federal Government proposed the PSRP specifically to address the electricity market/financial shortfall which arose because of a combination of factors such as gas shortage, non-reflective tariffs and Naira to dollar exchange rate fallout. The Federal Government of Nigeria hopes to apply the following means in meeting the total funding requirements of \$7.6 Billion over the next five

years: Budgetary Allocation: US\$3.50 Billion; NIPP sales: US\$2.10 Billion; World Bank: US\$1.0 Billion ; and AfDB: US\$1.0 Billion.

The PSRP if implemented properly is intended to make the NESI even more attractive to private sector participants. Critical to the successful implementation of the PSRP is the need to significantly reduce or eliminate the losses in the electricity market through strong regulatory enforcement regimes against power theft, effective metering of electricity customers and providing support for distribution network expansion. The introduction of cost reflective tariffs is also a promise anticipated by the effective implementation of the PSRP, going forward.

Conclusion

The on-going reforms in the Nigerian electric power sector provide new prospects and possibilities for investors. The Federal Government's vision 2020 for the sector aims to attain generation levels of about 40GW of power requiring investments of about US\$3.5 billion per annum in power generation alone. The Eligible Customers Regulation also creates a vista for the growth of a willing buyer-willing seller market opportunity for investors.

Whilst the opportunities for investment in the power sector of Nigeria range from on-grid to off-grid generation options depending on the preference of investors, the reforms undertaken by government clearly demonstrate a desire to attract investment across the entire spectrum of the Nigerian Electricity Supply Industry (NESI). With the vast market size in Nigeria, off-grid investment opportunities are gradually gaining traction within the NESI space making the power sector increasingly open to investment from all possible viewpoints.

Information Communication Technology Sector



GEORGE ETOMI & PARTNERS

Introduction

Nigeria is the fastest growing Information Communication Technology (ICT) market in Africa. For a developing country with over a population of over 186 million (which exceeds the combined population of the other 15 countries in West Africa), the unrealised ICT demand in Nigeria offers huge opportunities for foreign investors arising in segments such as products and services, mobility, security solutions, telecommunications, education and capacity building.

Investing in ICT: The Fibre Optic Broadband Initiative

Nigeria's substantial consumer base offers a variety of opportunities for mobile operators, broadband companies and content providers. The country has a young, rapidly expanding population, providing a substantial pool of consumers. Investment in infrastructure will be crucial in the years ahead, as well as a more attractive environment for both foreign investors and local start-ups. Despite the

inherent challenges, the country has managed to produce some of the continent's most successful ICT firms, and the sector is expected to emerge as a standout market in the coming years. According to the Nigerian Communications Commission (NCC) and as stated earlier, Nigeria has over 145 million active subscribers, in the voice segment, over 102 percent teledensity and about 92 million internet connections, making it a prime environment for investment.

The Nigerian telecommunications market is fully liberalised, highly competitive, and evolving. A wide range of policy and regulatory initiatives have been undertaken to open up the market to enable private operators to provide products and services across the entire spectrum of ICT market segments. For example, the National Broadband Plan (NBP 2013-2018) aims to promote pervasive broadband deployment; increase broadband adoption and usage; and ensure availability of broadband services at affordable prices.

Nigeria's focus is now to attract the right investment to grow this sector through broadband coverage expansion. The NCC has entrenched in its ICT regulations measures and guidelines to license wholesale broadband service providers in a way that is consistent with the Open Access Model for broadband deployment. An example is the proposed regulation on licensing (Licensing Regulations 2013). So far there have been seven infrastructure companies (Infracos) that have been earmarked for licensing. However, geographically only two zones, Lagos and Abuja, have been licensed. This leaves a lot of room for investment, as the process for licensing the remaining five zones has not yet been concluded.

Legal and Regulatory Framework for ICT in Nigeria: The Open Access Model for Next Generation Fibre Optic Broadband Network

The Nigerian Communications Act, (NCA) 2003 is the enabling legislation for the Nigerian communications industry. The NCC is the independent national

regulatory authority for the telecommunications industry and is a fully autonomous body with exclusive powers to license and regulate both private and government-owned operators.

The National Information Technology Development Agency (NITDA) Act 2007 established NITDA as the government entity responsible for promoting IT penetration and serving as the clearing house for public sector ICT projects. The National Broadcasting Commission Act (NBC) is the regulatory framework for the broadcast industry and performs its functions by issuing licences, assigning broadcast frequencies, setting standards and monitoring compliance with the Broadcasting Code.

The NCC has a strong market liberalisation agenda and promotes citizen access, high-speed broadband penetration, fair competition and technology neutrality. The NCC has formulated the Open Access Model for Next Generation Optic Fibre Broadband Network, which allows for inclusive, fair and transparent licensing processes as well as incentives for investors in the industry. Some of the Open Access principles are enshrined in the following ICT regulations and guidelines:

- **Guidelines for Deployment of Broadband Services on the 5.2-5.9GHz Band** – Due to the development of services and the increased availability of equipment for these bands, these guidelines have been developed framework for providers. It aims to harmonise the use of frequency bands, set up technical and operational parameters, as well as specific national procedures for deployment and market access for broadband wireless possibilities in the frequency band. Another important purpose of the guidelines is to ensure easy market entry, interference free operations, and guaranteed quality and grade of service.
- **Nigerian Communications Act – Competition Practices Regulations 2007** – promotes fair competition in the communications

sector and protects against the misuse of market power or anti-competitive practices.

- **Telecommunications Networks Interconnection Regulations 2003** – enables information sharing and interconnectivity between licensed communications operators. Interconnectivity must be made by written agreement and clearly state the terms for use of the information obtained and the importance of confidentiality of such information.
- **Guidelines for Grant of Access on Federal Highways, Right of Way to Information and Communication Technology Service Providers** – harmonises Right of Way charges payable by the telecommunications companies and related public utility infrastructure on Local Governments, States and Federal Highways. The guidelines also promote infrastructure sharing and thereby reduce taxes payable by the telecommunication firms.
- **Guidelines on Co-location and Infrastructure Sharing** – aims to reduce unnecessary duplication of infrastructure, to ensure that the economic advantages derivable from the sharing of facilities are harnessed for the overall benefit of all telecommunications stakeholders and to minimise capital expenditure on supporting infrastructures.
- **Universal Access and Universal Service Regulations 2007** – provides a framework for the design and implementation of a system of universal access and universal service provision. Service providers that are current Nigerian licensees and parties that are potential new entrants to the Nigerian communications sector shall be eligible to bid in a competitive selection process, subject to the qualification criteria established for the competitive selection process.

Licensing Requirement under the Nigerian Communications Act 2003

Although investors may bid for contracts without obtaining the requisite licence, such licence would be required before participating and operating in the Nigerian ICT sphere. There are two categories of licences required in order to operate in the communications sector:

- **Individual licences** – allows a specified person to conduct a specified activity and may include conditions to which the conduct of that activity shall be subject.
- **Class licences** – allows any or all persons to conduct a specified activity and may include conditions to which the conduct of that activity shall be subject

Currently, the application process for both categories of licences involves submission of the application form, the requisite corporate documents together with the feasibility report of the proposed service to be provided. There is also an administrative fee which is payable on approval of the application.

Key Licensing Conditions for the Open Access Model for Next Generation Optic Fibre Broadband Network

The NCC has provided licensing conditions for potential service providers in the industry. The Commission intends for these guidelines to shape operations in the emerging aspect of its ICT innovations. Some of the conditions include:

- **Scope of Licence** – provides a wholesale open access Metropolitan Fibre Network within licensed areas, regarding the construction, maintenance and operation of fibre optic network facilities within licensed areas; and building capacity to link and carry traffic between licensed areas and other cities and regions in Nigeria and to international submarine capacity.

- **Term** – the Licence shall be valid for 20 years, renewable for further five-year periods.
- **Competition** – promotes sharing of infrastructure and facilities with other similar licensed persons with terms and conditions agreed by both parties.
- **Interconnection** – promotes interconnectivity of telecoms systems with other operators to ensure neutrality and equality of access. However, note that providers with a wholesale capacity of 2.3GHz, will be given priority over other access seekers where capacity rationing is required.

Policies and regulations exist to show that the country is moving towards, and not away from Open Access Model. The Nigerian telecommunications industry is gradually transiting from a legacy of infrastructure duplication, which was pronounced at the beginning of the deployment of voice-based networks 15 years ago, to one of infrastructure sharing targeted at delivering high-speed broadband services nationwide.

With the high cost of perpetual upgrades in the mobile market, many operators have entered into voluntary commercial arrangements to share infrastructure and reduce the Capex for much lower Opex outlays. In 2015, the NCC announced the withdrawal of the floor price on all data products in order to deepen the growth and development of data services in Nigeria. The floor price was a ceiling imposed to control or limit the price that can be charged for a product. This was done to improve competitive practices among market players

Tax Policy and Incentives for Investors in the Nigerian ICT Sector

As part of the concerted effort to attract foreign direct investment and stimulate private sector investment and development of the ICT sector, the Nigerian Government has put in place a number of investment incentives and reliefs such

as enjoying Pioneer Status etc. There is more information on applicable tax benefits in Chapter 9.

Conclusion

The Federal Government of Nigeria's plan to increase ICT investment, especially as it relates to Broadband technology in the country provides prospects and opportunities for investors. In this regard, the Nigerian government has developed and continues to develop various laws, policies, incentives, regulations and guidelines to ensure that the sector enjoys a liberalised, open access environment, with the aim to attract both local and foreign investment and ensure high return on investment.

Creative Industry



LAW ALLIANZ

In the last decade the Nigerian creative industry has become a strong cultural force dominating sub Saharan Africa and making inroads globally. For over a decade, key institutions like the World Bank and British Council etc have been advocating the growth and the impact of the industry to the Nigeria economy. It was not until in 2014 after the rebasing of the Nigerian economy that the real picture began to emerge; for example, the film industry alone accounted for 1.4% of our GDP (i.e. \$7.2 Billion), employing over a million people aside from key sectors like music, advertising, software design, design publishing, fashion design, visual arts (photography, painting), performing arts (live music, dance, theatre, DJ), comedy, Audio visual (Television and Radio), blogging, gastronomy (culinary arts) and Makeup etc.

Flowing from the above and given Nigeria's youthful population of about one hundred and twenty million (120,000,000) people – the Federal Government has prioritised the creative industry under its Economic and Recovery Growth Plan (ERGP) 2017 – 2020. In addition, the government has embarked on a series of reforms meant to galvanise this industry. According to a report by PWC

(Entertainment and Media Outlook: 2017 -2021 - An African Perspective), Nigeria with a current valuation of \$4 billion is set to become the fastest growing creative industry globally surpassing the United States within the next 3 years.

Incentives

The Nigerian Export Import Bank created a loan facility named the Nigerian Creative Arts & Entertainment Facility Loan to ensure access to finance towards sustainable development of the creative industry. Any Company in Nigeria can benefit from the facility provided it is incorporated in Nigeria; and

- Operates in the entertainment and creative industry,
- is not owned by government (federal, State or local), and
- It is not an oligarch business interest that may interfere with content policy for its own interests.

This facility covers all segments of the creative industry. An investor who has registered a company in Nigeria can access funding, after meeting all the requirements. Also, the Bank of Industry has launched a US\$3 million-dollar fund (Nollyfund) to support filmmakers. The Federal Ministry of Information and culture recently created a US\$1m dollars venture capital fund to assist with better access to finance for stakeholders within the industry.

Another major incentive to investing in the creative industry is the Pioneer Status Incentive (PSI) granted by the Federal Government. (see Chapter 9). The pioneer status for the creative industry covers music production, publishing and distribution – including online digital distribution – photography; production as well as post-production of digital content for motion pictures, videos, television programmes, commercials, distribution and exhibition (digital movies, animation, videos, TV programmes and commercials); publishing of books (copyrighted books) as well as development and publishing of ready-made software (operating systems, software applications and computer games).

The three sectors that drive the industry are Film, Television and Music:

Film/Television Industry

Piracy has been a bane of the film industry until recent investments in cinemas which led to a film titled the “Wedding Party” (now on Netflix) grossing over N500,000,000 from 133 screens serving over a population of 180,000,000 people, that is 1 screen for every 2,000,000 compared to United States with 40,000 screens (i.e. 1 screen to every 9000) or China with 13,000 screens (1 screen to every 220,000). The deficit creates an obvious opportunity for between 5000 – 10,000 screens in the next 10 years; extrapolating from the above obvious opportunities are available in Nollywood’s value chain.

The Television market in Nigeria grew enormously in 2016. The market is driven by the pay-tv subscription model led by Multichoice’s DStv and GOtv services via satellite, pay-DTT (Digital Terrestrial Television) and by Star times. The ongoing Digital Switch Over (DSO) when completed promises to unlock opportunities in manufacturing for over 30,000,000 setup boxes, create 180 state channels, 30 regional channels and 10 National channels which will cater for local music, news, film, children programming, weather and sports etc. Also, it will create opportunities for push and subscription Video On demand (VOD) substantially reducing piracy to the barest while building capacity and demand for writers, professionals in lightning, sound, camera, location, editing, actresses, actors, insurance and costume etc.

Music

Nigeria’s music better known as Afrobeats has become a cultural phenomenon. In recent times Nigeria has probably become the most travelled music globally leading to several local artist bagging international deals with such companies like Sony music. A music collaboration between Nigeria’s Wizkid and the rapper Drake was until recently the most streamed song ever. It has now become a fad

for foreign artists to feature local artists in a bid to tap into the growing influence of Afrobeats. As a spin-off of its popularity, several local artists tour both Europe and North American to the delight of their fans. In Nigeria, telecommunication networks are the largest distributors of music through caller tunes and ring back tones - MTN alone (out of 5 licensed GSM companies) claims revenues of about \$150,000,000 annually. This excludes the deluge of music videos, locally curated music television channels, talent competitions, concerts, radio and online streaming. According to PWC, the music sector is currently worth over \$1 Billion dollars and is only expected to grow exponentially as broad access becomes more affordable, royalty collection improves and creation of digital rights with the impending passage of the amended copyright bill.

Any investor seeking to get involved in the industry will need to take into cognisance the following issues, how these may impact their operations and the relevant government agencies.

Copyright

In Nigeria, all copyrights are protected under 2004 copyright laws CAP 28 Laws of Federation (LFN) for a period of 70years for literary, cinematographic, and musical and artistic works while films and photography last 50 years from the date of the death of the publisher. The Nigeria Copyrights Commission (NCC) is the body set up for copyright administration, registration and enforcement. A unique feature of the copyright law in Nigeria is the notification scheme which allows copyright owners to register their copyrights through the, deposit of a copy of their works with the Nigeria Copyright Commission (NCC). Nigeria being a signatory to the Internet treaties is currently in the process of domesticating the treaties and – the draft amendment bill, has passed the 2nd reading at the National Assembly.

The Copyright Society of Nigeria (COSON)

Nigeria Copyrights Commission (NCC) is empowered to license different collecting societies for different categories of work. Regulation 5 (2) Copyright (Collecting Societies) Regulations, 2007 provides amongst other things that collecting societies administer rights in the most efficient and cost effective manner in the collection and distribution of royalties; in line with those powers Copyrights Society of Nigeria (COSON) was licensed for the purpose of collecting royalties, instituting actions on behalf of owners of sound recording and musical works, while Reproduction Rights Society of Nigeria (REPRONIG) was licensed as a collecting society to cater for the rights of authors in the literary field. A collecting society for film works has been licensed though it is yet to become fully operational.

Broadcasting

The Nigeria Broadcasting Commission (NBC) regulates all forms of broadcasting by issuing licenses for radio and television stations (satellite or terrestrial broadcast) and equipment approvals. The NBC under the on-going DSO also licenses signal distributors, setup box manufacturers, allocates frequencies, regulates content and generally sets standards as well as give policy direction on other disruptive technologies in the broadcasting industry. The Commission also has a 30% local content policy that must be met by all its licensees.

Value Added Services

The Nigeria Communications Commission (NCC) oversees and licenses service providers using the telecommunication networks to sell or distribute media services through any of the licensed telecommunication networks i.e. Over the Top (OTT), Caller Tunes and ring back tones etc.

Censorship

The Nigeria Film and Video Censors Board (NFVCB) is the regulatory body set up by Act No.85 of 1993 to regulate films and video industry in Nigeria. The Board is empowered by law to classify all films and videos whether imported or produced locally. It is also the duty of the Board to register all films and video outlets across the country and to keep a register of such outlets.

Domain name registration

Nigeria Internet Registration Association (NiRA) is the registry for “.ng” Internet Domain Names and maintains the database of names registered in the “.ng” country code Top Level Domain. NiRA is a self-regulating body and manager of the “.ng” national resource, the country code Top Level Domain (ccTLD) name space in the public interest of Nigeria and global Internet communities.

Trademarks/Patent etc.

For the protection of trademarks such as a name, logo, slogan, domain name, shape, colour or ideas, inventions, designs, and trade secrets it is recommended that investors apply to the Trademarks, Patents and Designs Registry, Commercial Law Department, Federal Ministry of Industry, Trade and Investment through an accredited agent.

Conclusion

As the creative industry continues to grow, the government is set to continue legal and regulatory reforms that ensure protection and enforcement of rights, provide incentives for investors and capacity building for practitioners at different levels. The sector has significant challenges such as low broadband penetration and poor postproduction facilities. However, these challenges create huge opportunities for infrastructural development in distribution, post

production, financing and funding, lease of equipment, capacity building, touring and cinema development in Nigeria.

Healthcare Sector



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The health care system in Nigeria can presently be described, at best, as well below par. The system is characterised by poor primary healthcare facilities, non-functional medical equipment, inefficient health centres, inadequate emergency responses and low health insurance scheme coverage, amongst other challenges. The World Health Organisation (WHO) in its recent annual rankings scored Nigeria very poorly in most of its categories ranking Nigeria 187 out of 190 countries. The WHO also reported that Nigeria loses over \$1 billion annually to medical tourism; approximately 80% of Indian visas granted to Nigerians are for medical treatment; and 60% of Nigeria-trained doctors practice abroad.

That said, these unfavourable statistics, present enormous opportunities to local and international investors in this sector.

Despite these statistics, the sector presents enormous opportunities to local and international investors.

The Structure of Nigeria's Healthcare Regime

In Nigeria, the Federal government is responsible for Federal hospitals and their respective University Teaching Hospitals. The State government handles State-owned general hospitals and State University Teaching Hospitals while the local government oversees primary healthcare centres.

The National Health Act 2014

The National Health Act 2014 (NHA) established a State-supported health insurance scheme run by the National Council on Health. The aim of the NHA is to establish a framework for the regulation, development and management of a National Health System, to set standards for rendering health services, to achieve universal health coverage, and meet the Millennium Development Goal target for the nation. The National Health System encompasses public and private health providers in the country, which gives the private sector the opportunity to play a bigger role in the delivery and financing of health services across Nigeria. The NHA established the National Council on Health to initiate health standards and make provision for the Basic Health Care Provision Fund (BHCPF), an earmarked fund, aimed at improved government financing of both the supply and the demand sides of basic health services.

A guideline for the administration, disbursement, monitoring and fund management of the BHCPF has been issued which sets out the processes to be applied, the responsibilities of various stakeholders and the accompanying accountability expectations contingent on these responsibilities. In addition, the Federal government inaugurated the Nigeria Sovereign Investment Authority (NSIA) to reflect the six geopolitical zones of the country. The mandate of the NSIA is to increase investment in local infrastructure, encourage private sector investment to bridge the healthcare infrastructure gap, contribute to the reduction of the disease burden, and facilitate improvement of healthcare in the country.

The National Health Insurance Scheme Act

This Act establishes the National Health Insurance Scheme for the purpose of providing health insurance which entitles insured persons and their dependants to pre-agreed good quality and cost-effective health services.

The National Primary Health Care Development Agency Act (NPHDA)

This Act establishes the National Primary Health Care Development Agency which is supervised by the Federal Ministry of Health. The Agency promotes technical collaboration by stimulating Universities, non-Governmental organisations and international agencies to work with Local Government Areas to develop their capacity.

Investment Opportunities in Nigeria's Health Sector

In Nigeria, healthcare financing is low. This inadequate government expenditure and limited legislative innovation has failed to significantly improve the sector. Significant investment is required to turn the sector around. Examples of some of the investment opportunities are listed below:

Health Insurance

Every company in Nigeria with at least 10 employees must sign up to a health insurance scheme for its employees. This creates a wealth of opportunity for investment in the health sector as currently, Health Management Organisations (HMOs) are relatively small in size and have limited capacity. Currently, there is no HMO listed on the Nigerian Stock Exchange. There is therefore room for expansion in this sector as well as mergers and acquisitions. The envisaged expansion will create increased capacity to manage a greater number of beneficiaries.

Public Private Partnerships (PPPs)

PPPs can be utilised in the construction and delivery of healthcare facilities and the purchase of medical equipment. Investment opportunities also abound in

areas such as the construction of specialist hospitals, diagnostic centres, quarantine services, ambulance emergency services, mobile clinics and pharmaceuticals, to mention a few. Investors could seize this opportunity to participate in creating world class health facilities in the country. The Garki Hospital Abuja is a prime example, where there has been a general improvement in service delivery as a result of a PPP.

Private Participation through Foreign Direct Investments

The NIPCA and CAMA regulate investment activities in the country. Through the mechanism of Foreign Direct Investment (FDI) the investors could supply medical laboratories for testing and diagnostic services among other things.

Pharmaceuticals

There are over 100 pharmaceutical companies in Nigeria, however, only a handful are listed on the Nigerian Stock Exchange. This is insignificant in comparison to the formidable pharmaceutical companies operating in western countries. Investment opportunities in this respect include business combinations, contract manufacturing and investment in new facilities. The use of PPPs and FDI to manufacture vaccines locally can also be explored.

Medical Devices and Equipment

Public hospitals in Nigerian typically lack the required equipment to function efficiently. This is largely due to long-term underfunding. Investments in this respect could come through PPPs and FDI. The possibility of equipment leasing can also be explored.

ICT

A substantial investment in ICT in medical service delivery is essential for improving efficiency in the sector. This will greatly improve record keeping, information dissemination and retaining and building essential databases. The ICT framework in Nigeria at this present time is underdeveloped.

Government Incentives for Investments in Healthcare

The Federal Government has put some incentives in place to encourage investment in the country's health care system (see Chapter 9). Some of these incentives include, but are not restricted to, the following:

- Pioneer Status – companies that qualify are given tax holidays for an initial period of 3 years (with another possible 2 years) to enable the company make profit in those years, free of tax liabilities.
- Free Repatriation of Imported Capital and Profits – foreign investors once they obtain Certificates of Capital Importation upon bringing their capital into the country through an authorised dealer are afforded free repatriation of their investments and profit in the foreign currency with which the investment was made.
- In-plant training – companies obligated to have in-plant training facilities enjoy a 2% tax concession for a period of five years.
- Tax Relief for Research and Development – as a means of encouraging industrial technology, companies and other organisations that engage in research and development activities for commercialisation enjoy 20% investment tax credit on their qualifying expenditure.

Conclusion

Considering the above and the Federal Government's incentives, the future of primary health care delivery in Nigeria lies mainly with private investor participation and Nigeria welcomes investment into this sector.

Solid Minerals Sector



GEORGE ETOMI & PARTNERS

Nigeria's Solid Minerals Sector (the sector) has been earmarked as one of the priority areas in Nigeria's continuous efforts to diversify its economy given the country's abundant and commercially exploitable natural resources.

The Federal Ministry of Mines and Steel Development (the Ministry) estimated that the sector contributed approximately 0.33% to the Gross Domestic Product (GDP) of the country in 2015 compared to the 1960s and 1970s when it contributed approximately 4 to 5%. The sector needs sustained long-term investment if it aspires to attain the same heights it once achieved in the past. To this end, the current administration has begun reforms, which would hopefully lead to an increase in investment in the sector.

Roadmap for the Growth and Development of the Mining Industry

In 2016, the Ministry released its "Roadmap for the Growth and Development of the Mining Industry". The Ministry projects or estimates that Nigeria could be earning approximately US\$30 billion equivalent to a 3% contribution to GDP, if proper reforms and measures are implemented. The Ministry also identified

seven (7) priority mineral resources (Coal, Bitumen, Limestone, Iron Ore, Barites, Gold, & Lead/Zinc) that remain largely untapped and which it believes will make a significant contribution to Nigeria's economic development.

Investing in Solid Minerals in Nigeria

Just like the Power Sector, the Mining/Solid Minerals Sector can be classified along its value chain: Exploration & Mining; Logistics & Transportation; Refining & Processing; and Trading, Manufacturing/Wholesale & Retail activities. Any potential investor is at liberty to invest in any of the segments in the mining industry value chain. In making an investment decision to invest in the sector, there are a number of factors that must be taken into consideration, namely:

- Legal and Regulatory Framework
- Tax Policy & Incentives
- Local Content Policy
- Geoscience Data & Information

Legal and Regulatory Framework

The Mining Industry is regulated by the Nigerian Minerals and Mining Act 2007 (NMMA), and the Nigerian Minerals and Mining Regulation 2011 ("the Regulations"). The Act vests control of all properties and minerals in Nigeria in the States and prohibits unauthorised exploitation or exploration of minerals. According to Section 1(2) of the Act, all land in which minerals are found in commercial quantities shall from the commencement of the Act be acquired by the Federal Government in accordance with the Land Use Act. Property in mineral resources shall pass from the government to the person who lawfully acquires a right over the exploration or mining of the mineral resources.

The apex regulator of the sector is the Ministry of Mines and Steel Development. The Ministry operates through the following Departments: Mines Inspectorate

Department; Mines Environment & Compliance Department; Mining Cadastre Office and Artisanal & Small-Scale Mining Department.

Guidelines on Mineral Title Application

Potential investors interested in exploration & mining will have to adhere to the criteria set out by the Mining Cadastre Office (MCO). The MCO is the Department responsible for the administration of mineral titles in Nigeria. An investor must obtain a licence, which is granted solely by the MCO. Obtaining such a licence could be by a simple application or by competitive bidding depending on the type of license being sought. The Act provides for 6 types of mineral titles that may be granted to potential investors. They are listed as follows:

- **Reconnaissance Permit** – This Permit confers on the holder a non-exclusive right to search for mineral resources. It is noteworthy, that drilling and other subsurface activities are not permitted and a holder is allowed to obtain and remove samples in small quantities only.
- **Exploration License** – It confers on the holder the right to explore discover, determine the characteristics and evaluate the economic value of mineral resources] on an exclusive basis for all mineral resources within the title area (established zone only).
- **Small Scale Mining Lease** – The holder of the lease has the exclusive right to carry out small-scale mining operations [mining operations involving low-level technology or methods not requiring substantial expenditure] within the title area.
- **Mining Lease** – The Mining Lease confers on the holder the exclusive right to carry out all mining operations within the mining lease area. The land area is determined in relation to the ore body defined in the feasibility study and additional area for working of materials.

- **Quarrying License/Lease** – The Quarrying License confers on the holder the exclusive right to carry out quarry operations within the leased area.
- **Water Use Permit** – This permit confers on the holder, the exclusive right to obtain and convey water and/or occupy land for the conveyance of water. The permit is usually granted to holders of Exploration License, Mining Lease, Quarrying Licence and Small-Scale Mining Lease. The Water Use Permit is for the duration of the original license granted.

The mineral titles described above confer different rights and privileges on the holder of such title and enable such holder to perform different functions. The Regulations and the “**Guidelines on Mineral Title Application**” provides more information on the application procedures for each of the title/licenses and the respective criteria and fees that must be paid to acquire such licenses. For instance, any potential investor wishing to obtain a mining lease, must satisfy the following pre-grant conditions:

- Duly Completed Application Forms
- Feasibility Report (with the Council of Nigerian Mining Engineers and Geoscientists - COMEG seal and signature)
- Prospecting Plan/Reserve Estimation
- Mine Plan/Design
- Evidence of Financial Capability
- Irrevocable consent from land owners/occupiers with sworn affidavit in support of the consent
- Attestation of non-conviction of criminal offences under the Act
- Evidence of payment of processing fees

- Certified True Copies of Certificate of Incorporation and all other incorporation documents (CAC 2, 7 and Memorandum & Articles of Association)
- Minerals to be exploited
- Survey Plan
- Notice to Land Owners

After grant of the mineral title, an investor must also satisfy the following post-grant/pre-development conditions before they can fully begin their mining operations:

- Submission of Environmental Impact Assessment Statement to the Mines Environmental Compliance Department
- Execute Community Development Agreement with host community and submit copies to the MCO and other relevant departments in the Ministry
- Compensation payable to the Land Occupier
- Mine Closure/Rehabilitation Plan

Tax Policy & Incentives

The Companies Income Tax Act (CITA) and the NMMA both regulate the tax regime for the mining sector. (On Taxation, see Chapter 9)

The Nigerian Minerals and Mining Act 2007

- Tax holiday for an initial period of 3 years from commencement of operations and renewable for additional 2 years.
- Exporters of mineral products may be permitted to retain part of their foreign exchange earnings in a domiciliary account for the purpose of acquiring spare parts and other mining inputs.
- Exemption from customs and import duties in respect of plant, machinery equipment and accessories imported exclusively for mining

operations. However, the plant and equipment can only be disposed of locally upon payment of the applicable customs and import duties.

- Free transferability of foreign currency through the CBN for the following:
 - Payment for servicing of certified foreign loans.
 - Remittance of foreign capital in the event of sale or liquidation of the business.
- Grant of personal remittance quota for expatriate personnel free from any tax imposed by any enactment for the transfer of external currency out of Nigeria.
- All infrastructure costs provided by the mining company and approved by the MCO to be capitalised and capital allowance claimed at 95% in the first year of operation.
- Annual indexation of unutilised capital allowance carried forward by 5% for mines that commenced production within five (5) years from the date of enactment of the Act.
- Accelerated Capital Allowance on mining expenditure (95% initial allowance and retention of 5% until asset is disposed.
- The Minister for Solid Minerals may grant a concession for the royalty payable on any mineral to be deferred for a number of years, subject to the approval of the Federal Executive Council.
- Actual amount incurred out of reserves made for environmental protection, mine rehabilitation, reclamation and mine closure cost shall be tax deductible, subject to certification by an independent qualified person.

Company Income Tax Act (CITA) 2004

- 30% tax on every Nigerian company – Section 40

- A new company engaged in mining activities shall be exempted from tax for the first three years of its operation. – Section 36
- The profits earned by a mining company after the initial tax holiday period may be exempted from income tax under the following circumstances:
 - If the minerals are exported from Nigeria, and the proceeds from such exports are repatriated to Nigeria and used exclusively for the purchase of raw materials, plants, equipment and spares.
 - If the minerals produced are exclusive inputs for the manufacture of products for exports, provided the exporter gives a certificate of purchase of input to the company.
- Potential exemption of interest on foreign loan from income tax, subject to the conditions stipulated under CITA.
- Where a mining company records a turnover below N1million within the first five years of commencement of business, it will be liable to tax at the rate of 20%.
- Grant of Investment Allowance of 10% on qualifying plant and machinery.
- A company may also be entitled to claim an additional rural investment allowance on its infrastructure cost, depending on the location of the company and the type of infrastructure provided.

Geoscience Data & Information

Nigeria has set about improving the current amount of data and information that can be of use to investors who are considering investing in the sector. At the recent Mining Investment conference that took place between the 5th and 8th of February 2018 in Indaba, South Africa, Nigeria's Minister of Mines and Steel Development, presented the new Airborne Electromagnetic Survey Results that

had just been procured. At the same event, he spoke to investors and assured them that the ministry would undertake more extensive electromagnetic Airborne Geological Surveys of other regions in the country and that the Ministry would soon finalise the establishment of the National Minerals Database.

Local Content Policy and Regulations

As a developing economy, Nigeria is seeking to continuously improve its local manpower and expertise. To this end, the President recently issued an Executive Order (dated 2nd of February 2018), which aims to improve local content in public procurement with science, engineering and technology components. Although there are no clearly set out policies or regulations on local content that governs the mining industry, potential foreign investors who wish to operate in the mining sector are advised to incorporate some level of local content in its business plan/strategy. The Nigerian Government would be very receptive of this initiative and this could give investors the edge when making independent applications or entering their bids in a competitive bidding process.

Additional Factors

Potential investors should also consider additional factors such as: Infrastructure, Security and Economic & Business Climate. The Federal Government of Nigeria has made significant improvements in each of these areas. The government has invested significantly in Nigeria's railway infrastructure and has continued to invest in major road constructions linking the various economic centres in the country. The government is also making improvements in the business environment by adopting more efficient and modern technologies to make business easier and faster. In fact, the Ease of Doing Business Index for 2018 published by the World Bank showed that Nigeria had moved up 24 positions from 169th in the 2017 to 145th. This shows continuous efforts are being made to improve the business environment.

Conclusion

The Solid Minerals sector in Nigeria has been estimated to be worth trillions of dollars and is thought to be even larger than the Oil & Gas sector. Given the fact that the government currently lacks funds to adequately develop the sector, huge private sector investment is needed. The sector already has a robust regulatory framework and favourable incentives; however, more improvements are still needed. The Ministry is currently working on the establishment of a Nigerian Mining Commission, which will be responsible for the regulation of the sector. This will change the current regime, bringing it in line with modern governance practices where there is an independent regulator. With strides being made to improve other areas like infrastructure and business environment, there is no better time to leverage on the huge potential in the mining sector in Nigeria.

Dispute Resolution



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As in any jurisdiction, an acquired business or company may be involved in subsisting litigation and despite best efforts, even the terms of the acquisition itself may be a subject of dispute. Hence dispute resolution mechanism should be discussed. Notwithstanding the well-developed legal system in Nigeria, delay and costs of resolving disputes can be a disincentive to investment. However, there are now important developments around dispute resolution that are easing the complications. In this jurisdiction, all legal practitioners have the right of audience in all the courts of the land and the distinction made in England and Wales between solicitors and barristers do not exist.

As mentioned earlier in Chapter 1, Nigeria is a federation of 36 States and both the Federal Government and State Governments have their own separate judicial arms. In broad terms, the Federal High Court has jurisdiction in civil cases and matters relating to the revenue of the Government of the Federation, taxation, customs and excise duties, export duties, banking, companies and allied matters, admiralty among others. The State High Courts have unlimited jurisdiction to

adjudicate on matters other than those within the exclusive list of the Federal High Court. This will include but not limited to company/commercial disputes, civil law, urban planning, property law etc

Commercial disputes therefore can be litigated at the State and Federal High Courts in the first instance where cases are heard by a single judge. Appeal from these courts lie to the Court of Appeal and further to the Supreme Court where cases may be heard by 3 or more judges depending on the circumstances of the case.

Disputes could be settled by way of litigation, arbitration and mediation/conciliation.

Limitation Period

Limitation periods are provisions within laws that set the maximum time after an event within which legal proceedings may be initiated. There are various limitation periods for different subject matter claims. Actions based on simple contracts, recovery of debts and arrears of interest, tortuous malfeasance which includes damages for negligence or breach of a duty of care, account stated, etc, must be commenced within a period of six years of the occurrence of the injury, loss or damage.

Actions based on any legal instrument under seal especially where such legal instrument relates to an interest or charge on land, or the arrears of an annuity charged on an immovable property, or the enforcement of an arbitration award where the Arbitration Agreement is under seal, or the judgment of a competent court, must be commenced within a period of twelve years from the period when the cause of action arose, or the judgment or award was entered.

The limitation period for other kinds of legal actions are: -

1. Twenty years for a State Authority to bring a legal action to recover land.

2. Twelve years to make any claim arising from a deceased person's personal estate.
3. Two years to recover any damages against concurrent wrongdoers under any civil liability enactment.
4. Three years to file a claim for damages arising from a slander, nuisance, breach of duty of care, etc.
5. Three months for actions against Public Officers.

However, where there is fraud, mistake or disabilities and mental incapacity, there will be exemption from the stated limitation period and action can commence whenever the Claimant became aware of the injury or of the existence to the legal right or relief.

Litigation

Pre-Action

In recent times, most of the States in Nigeria have adopted the new civil procedure rules and have introduced pre-action protocol. Before a claim is filed in Court, the Claimant is expected to comply with pre-action protocol. This allows parties to seek information from and provide information to each other in order to establish the areas of disagreement and whether there are bases to avoid litigation. An example of this is the High Court of Lagos State (Civil Procedure) Rules, 2012 which provides in Order 3 Rule 11 thereof as follows: *“All Originating Processes shall upon acceptance for filing by the Registry be screened for suitability for ADR and referred to the Lagos Multi Door Court House or other appropriate ADR institutions or Practitioners in accordance with Practice Directions that shall from time to time be issued by the Chief Judge of Lagos State.”*

Legal Action

Proceedings are commenced by the issue of a claim form which is lodged with the court and served on other parties. There is also a process of case management,

where the judge assesses the suitability of the case for Alternative Dispute resolution (ADR) and give directions regarding the issues to be tried, key dates for the exchange of documentary evidence such as witness statements, documentary disclosure, expert reports as well as the trial date.

Trial is mainly adversarial, and the remedies awarded by the courts are damages (aimed at compensating a claimant rather than punishing the defendant), declarations, injunctions, specific performance, or order for sale etc. Interest may be payable on money judgements.

Enforcement.

Judgement may be enforced in the following ways in Nigeria:

1. Execution by writ of Fieri fracas in the High Court where the enforcement officer has authority to seize and sell the debtor's property
2. Garnishee order (Third Party Debt Order) which operates to stop funds reaching the debtor such as banks by directing the funds to the creditor
3. Charging order over land and securities
4. Insolvency proceeding if a company is unable to pay its debts.

A High Court order obtained in Nigeria may be enforceable in England against the assets of the debtor under the Foreign Judgment (Reciprocal Enforcement) Act 1990 and vice versa.

Costs

The general principle is that the losing party will be ordered to pay the legal costs of the winning party, but the court has discretion whether or not to award costs. Court may award costs in full or partly in favour of the winning party and may decide on when such costs must be paid.

Arbitration

Arbitration is very important when it comes to the resolution of commercial disputes in Nigeria. The Arbitration and Conciliation Act 1990 reflects in many

respects the provisions of the UNCITRAL Model law and is consistent with 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Award (New York Convention).

In Nigeria therefore, for an arbitration award to be enforceable, there must be a written agreement between the parties to submit present or future disputes to arbitration. It is well established that Nigerian courts will stay proceedings in favour of arbitration if there is clear evidence of arbitration agreement between the parties.

The parties are at liberty to agree the procedure for appointing the tribunal. If there is no such agreement as to the number of arbitrators, the tribunal shall by default consist of a sole arbitrator. Either party may serve a written request on the other to make a joint appointment if there were to be a sole administrator. If there is to be a tribunal of three arbitrators, each party is expected to choose one arbitrator and both arbitrators will then appoint the third, who will be the Chair of the tribunal.

It is also up to the parties to select rules of procedure that will govern the arbitration and if there are no express provisions in the arbitration agreement, it is for the tribunal to decide procedural and evidential matters.

The tribunal may make its award at any time after the hearing, unless otherwise agreed by the parties in writing. It is generally expected that the award must be made as quickly as possible after the conclusion of the hearing detailing the reasoning and stating the seat and date of the arbitration. An award must be signed by all the arbitrators

The winning party to an award made in Nigeria may apply to the High Court for permission to enforce the award as if it were a judgment of the court. As Nigeria is a party to the New York Convention, subject to limited exceptions, any award

made in Nigeria may be enforced in England and Wales or any other New York Convention contracting States.

Alternative Dispute Resolution

Due to the inordinate delay in the interlocutory procedures, the only way to ensure a faster, reliable and fairer resolution of commercial disputes was for investors resort to a form of ADR either on the basis of the contract with the other party or by voluntary agreement of parties. ADR is a term used to describe a range of processes outside the traditional litigation or arbitration process. It can be used to resolve disputes quickly, confidentially and economically. It consists of negotiation, mediation, conciliation and Arbitration which is now commonly resorted to in settling commercial disputes in Nigeria.

Most contracts involving foreign investors now contain ADR or arbitration clauses. This allows parties especially in commercial transactions to resolve their disputes outside of the traditional litigation process.

In the recent years, Nigeria has developed an increasing important and indeed effective mechanism to support its ADR systems. It is now referred to as the Multi-Door Court-House. (“**MDCH**”). The establishment of this mechanism is now enshrined in law. The Arbitration and Conciliation Act. The Courts now regularly refer disputing parties to the **MDCH**, which is often attached to the Courts to explore settlement of their dispute through one of the ADR mechanisms. This ADR mechanism is being adopted or modified by many State governments within Nigeria and there has been significant increase in institutional and ad-hoc, local and international arbitrations as well as a tremendous rise in the activities of institutional arbitration centres in Nigeria.

Any decision reached through the ADR process can then be put to the courts to give the agreement the force of law and be treated as a Court Order.

When investment disputes arise between the authorities and foreign investors, investors have the right to resort to conciliation and arbitration to settle any investment dispute against the Nigerian authorities

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