



Jackson, Etti & Edu

2023

DEFINING LEGAL MILESTONES



DEFINING LEGAL MILESTONES - 2023

INTRODUCTION

At Jackson, Etti and Edu (JEE), we recognize the importance of keeping our clients, stakeholders, and industry enthusiasts, apprised of the notable legal milestones which shaped various industries and sectors in 2023, and the potential impact of these, on the legal framework. We are committed to providing relevant legal updates to support your commercial objectives.

Premised on the foregoing, we will be delving into significant legislations and regulations which played a pivotal role in defining the Nigerian economic sector in 2023.

ACTS AND LEGISLATIONS

5TH ALTERATION ACT TO THE 1999 CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (AS AMENDED).

1. Act Nos. 15, 16 and 17, transfer legislative authority over prisons, railways, as well as power generation, transmission, and distribution, from the Exclusive Legislative List to the Concurrent Legislative List. This shift grants State legislatures the power to enact laws concerning these areas, allowing State governments to legislate on these matters henceforth.

2. Financial Autonomy of House of Assembly Act No. 6 amends Section 121 of the Constitution to guarantee the financial autonomy of the House of Assembly of each State. This amendment mandates that any funds designated to a State House of Assembly in the Consolidated Revenue Fund of the State be directly transferred into the Assembly's account. Furthermore, Act No. 6 reinforces this financial autonomy by establishing a Disbursement Committee for each state, thereby empowering the House of Assembly and the Judiciary.

3. Right To Food and Food Security: Acknowledging the crucial importance of food security to the nation's survival, Act No. 34 modifies Section 16 of the Constitution, specifically subsection 2(d). The amendment substitutes the phrase "suitable and adequate food" with "right to food and food security." Consequently, States are directed to formulate policies aimed at ensuring, among other things, the right to food and food security.

4. Pre-Election and Election Petition Matters: Regarding pre-election matters and election petitions, Act No. 10 introduces an amendment to Section 285 of the Constitution, adding a new subsection (13A). This provision accounts for situations where natural disasters, wars, state or national emergencies, prevent the timely filing of pre-election matters or election petitions. The time during such circumstances will not be reckoned in determining the deadlines for filing election petitions or delivering judgments on election petitions.



THE ELECTRICITY ACT, 2023

It is undeniable that the enactment of the Electricity Act has triggered significant legal and regulatory transformations crucial for achieving energy sufficiency and national development. This new legislation repeals the Electric Power Sector Reform Act, 2005 (EPSRA) and consolidates laws concerning the Nigerian Energy Supply industry (NESI). One of its key provisions is the empowerment granted to states, companies, and individuals to generate, transmit, and distribute electricity within their respective jurisdictions.

Moreover, the Act introduces innovative measures such as feed-in tariffs and renewable purchase obligations aimed at enhancing energy security, curbing greenhouse gas emissions, and fostering economic growth. Essentially, the Electricity Act, 2023, seeks to facilitate the transition from fossil fuels to renewable energy sources in Nigeria, aligning with global efforts towards sustainability and environmental conservation.

The Electricity Act delineates distribution from supply operations, incentivizes renewable energy initiatives, and designates the Nigerian Electricity Regulatory Commission (NERC) as the apex regulator. Additionally, it establishes the Power Consumer Assistance Fund (PCAF), mandates state governments to adopt the Electricity Act, and creates the National

Hydroelectric Power Producing Areas Development Commission (N-HYPPADEC). Furthermore, the Act outlines specific offences and corresponding penalties.

Recently, the Federal Government passed the Electricity Act Amendment Act, which addresses development and environmental concerns in host communities among other matters. The Amendment Act also allocates 5% of the actual annual operating expenditures of Power Generating Companies (GENCOs) from the preceding year for the development of their respective host communities.

The Electricity Act encourages collaboration among various stakeholders, including State Governments and Federal Government ministries. This collaboration is expected to yield several benefits, including the creation of appropriate investment mechanisms, the implementation of effective fundraising strategies, the establishment of robust enforcement mechanisms, and the facilitation of enhanced knowledge exchange. These collaborative efforts aim to drive efficiency and effectiveness in the energy sector, ultimately contributing to sustainable development and improved access to electricity for all.

Recently, the Electricity (Amendment) Act (the "Amendment Act") was enacted on February 9, 2024, to address environmental issues and development of host communities. It provides statutory obligations on generation companies to engage in Corporate Social Responsibility.

FINANCE ACT 2023

The Finance Act 2023 (the "FA 2023") was signed into law by former President Muhammadu Buhari on May 28, 2023, on the eve of handing over to the new administration. This comprehensive legislation introduces over thirty (30) amendments to existing tax laws in Nigeria, including the Capital Gains Tax Act, Companies Income Tax Act, Customs and Excise Tariffs, Personal Income Tax Act, Stamp Duties Act, Petroleum Profit Tax Act, Value Added Tax Act, and Tertiary Education Trust Fund (Establishment, etc) Act. These amendments aim to promote economic growth and address ambiguities in the laws regulating businesses.

The following are some of the key amendments to the tax legislations are as follows:

1. Capital Gains Tax Act Cap C1, LFN 2004

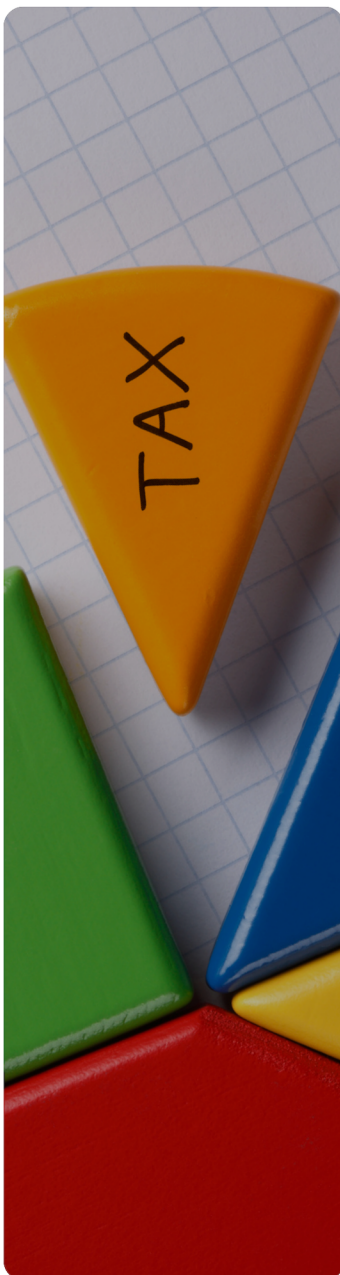
- i. **Inclusion of Digital Assets as Chargeable Assets:** The FA 2023 has expanded the scope of chargeable assets under section 3 of the Capital Gains Tax Act to include digital assets. This means that transactions involving digital assets such as cryptocurrency and non-fungible tokens (NFTs) are now subject to capital gains tax at a rate of 10%.



ii. **Roll-over relief for stocks and shares:** The FA 2023 stipulates that for the rollover relief to apply to stocks and shares, the proceeds from qualifying disposals must be reinvested in the acquisition of shares within either the same company or any other Nigerian company. This reinvestment must occur within the same year of assessment.

iii. **Computation of Losses:** The FA 2023 introduced a new section 5 to the Capital Gains Tax Act, replacing the former section that provided for the exclusion of losses. Under the new section, in computing chargeable gains, the amount accruing to a person on the disposal of any asset shall be deductible from gains accruing to the person disposing of that asset, provided that such loss shall only be deductible against the same type of asset.

2. Companies Income Tax Act, Cap C21, LFN 2004



i. **Submission of Gross Revenue Statement:** The FA 2023 has introduced provisions mandating foreign companies engaged in air or shipping transport businesses to submit gross revenue statement instead of a separate audited financial statement for their Nigerian operations when filing tax returns.

ii. **New Requirement for Companies engaged in Shipping and Air Business:** Another significant change introduced by the FA 2023 to the Companies Income Tax Act pertains to the additional documentation required from companies engaged in shipping, air and other relevant industries. This documentation is necessary before obtaining permits and approvals from supervisory regulatory authorities and parastatals.

iii. **Cancellation of Reconstruction Investment Allowance:** The FA 2023 revoked the 10% reconstruction investment allowance previously provided for in section 18(3) and (7) of the Second Schedule of the Companies Income Tax Act. Consequently, companies investing in the acquisition of plants and equipment will no longer qualify for the 10% allowance previously granted under the Principal Act.

iv. **Cancellation of Rural Investment Allowance:** The Act has also revoked the rural investment allowance previously granted under the Companies Income Tax Act. This allowance was provided to companies that incurred capital expenditure in the provision of water, electricity, tarred road or telephone services, particularly in rural areas located at least 20 kilometers away from government-provided facilities.

v. **Cancellation of Incomes in Convertible Currencies:** The FA 2023 repealed section 37 of the Companies Income Tax Act which previously granted a 25% tax exemption for convertible currencies derived from tourists and reserved for utilization within five (5) years, for the building and expansion of hotels aimed at tourism development. This exemption however continues to apply to companies that had already set aside the 25% prior to the enactment of the Finance Act 2023, pending the full utilization of such funds.

vi. **Exclusion of Upstream and Midstream Companies from Charges on their Assessable Profits:** Companies engaged in upstream and midstream gas operations are now exempted from the previous limitation of 66⅔ percent placed on the deduction of capital allowance from assessable profit in any given year of assessment. It is however stipulated that the value of any asset eligible for capital allowance under the Second Schedule of the Principal Act, must be reduced by the amount of any investment allowance claimable by such a company.

3. Customs, Excise, Tariff Etc. (Consolidation) Act Cap C49 LFN 2004

i. **Introduction of Import Levy:** The FA 2023 introduces a new subsection 4 under section 13 of the Principal Act, which imposes a 0.5% levy on all eligible goods imported into Nigeria from outside Africa. This levy is intended to facilitate the Federal Government's contributions and obligations to multilateral organizations.

ii. **Introduction of Excise Duties on all Services including Telecommunication services:** The FA 2023 has introduced the imposition of excise duties on all services in Nigeria, including telecommunication services. The specific rates at which each service will be charged shall be prescribed by the President.

4. Personal Income Tax Act

i. **Introduction of Tax Relief on Annuity with minimum holding period of Five Years:** The FA 2023 introduced a new provision under the Personal Income Tax Act, stipulating that insurance premiums paid by an individual for their life, the life of their spouse or the life of their children, as well as contracts for deferred annuity on the individual's life or the life of their spouse, are allowable deductions for personal income tax purposes. This allowance is however, subject to a minimum holding period of 5 years. Consequently, payments of premiums under a life insurance contract or deferred annuity in the preceding year of assessment concerning the taxpayer or their spouse, are now tax-deductible. These deductions can be used as relief in the computation of the taxpayer's Personal Income Tax (PIT).

5. Stamp Duties Act Cap S8 LFN 2004

i. The allocation of revenue generated from the Electronic Money Transfer Levy has been amended. Under the new sharing formula, 15% is allocated to the Federal Government, 50% to State Governments, and 35% to local governments.

6. Value Added Tax Act

i. **Remittance of Tax by Persons Appointed by the Federal Inland Revenue Service as Agents:** The FA 2023 stipulates that for tax remittance to the Federal Inland Revenue Service (“FIRS” or the “Service”), the Service shall appoint a person to withhold or collect tax, and that person shall remit the tax on or before the 14th day of the following month in the currency of the transaction.

ii. **Removal of VAT on Imported Taxable Goods by a Non-Resident Supplier:** The Act provides that, taxable goods imported into Nigeria, which are purchased through an online electronic or digital platform and operated by a non-resident supplier, will not be subject to Value Added Tax (VAT) upon clearance with the Nigerian Customs Service, provided that the importer shows evidence of registration or appointment of the non-resident supplier as an agent of the Federal Inland Revenue Service (FIRS) to collect or withhold tax.

iii. **New Definition of Building:** A new definition of “building” for VAT purposes has been included, excluding any fixtures or structures that can be easily removed from land, such as radio and television masts, transmission lines, cell towers, mobile homes, caravans and trailers.

iv. **Introduction of disposition and power of the service to disregard artificial transactions:** The FA 2023 empowers the FIRS to disregard a disposition or adjust controlled transactions that it considers ingenuine or to be artificial and fictitious for VAT purposes. Disposition includes trusts, grants, covenants, schemes, agreements or arrangements, as well as transactions involving related parties.

7. Petroleum Profit Tax Act (PPTA)

i. **Additional Chargeable Tax and Recognition of the Nigerian Upstream Petroleum Regulatory Commission:** Where a petroleum company fails to meet the required amount for its chargeable tax, it must pay additional chargeable tax. The value of the chargeable tax is determined by multiplying the volume of barrels by the fiscal price, which will be established by the Nigerian Upstream Petroleum Regulatory Commission. Additionally, the Commission is tasked with establishing a fiscal price for a crude stream where none exists.

ii. **Increased Fines and penalties for making incorrect accounts:** The FA 2023 also amends the PPTA by updating the penalty sections. There has been a general increase in the amount payable as fines under the PPTA. The FA 2023 has increased the penalty for such actions. Petroleum companies that submit incorrect accounts without any reasonable excuse are liable to the payment of an administrative fine up to the sum of N15,000,000 (Fifteen Million Naira) and 1% of the amount of tax the company is assessed for the accounting period during the occurrence of such omission.

iii. **Taxation of Surplus of Amount Approved for Decommissioning and Abandonment:** A significant amendment introduced by the FA 2023 was the inclusion of taxation on the surplus or residue of any amount approved by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) as contribution to a fund, scheme, or arrangement for the purpose of decommissioning and abandonment.

iv. **Penalty for making Incorrect Accounts:** In an effort to deter the submission of incorrect accounts, the FA 2023 has raised the penalty for such misconduct. Petroleum companies that submit incorrect accounts without a valid excuse may face an administrative fine of up to N15,000,000.00 (Fifteen Million Naira) and 1% of the assessed tax for the accounting period in which the omission occurred.

8. Corrupt Practices and Other Related Offences Act

i. **Increase of Fine for Public Officers:** The FA 2023 increases the penalty for public officers who, while performing their duties, award or sign contracts without budget provision, approval, and cash backing. The fine for such offenses is raised to N10,000,000.00 (Ten Million Naira) and upon conviction, offenders may face up to three (3) years of imprisonment. This marks a significant increase from the previous fine of N100,000 (One Hundred Thousand Naira) under the Principal Act – the Corrupt Practices and other Related Offences Act. Consequently, public officers who violate the provisions of the Corrupt Practices and Other Related Offences Act may be liable to fines or imprisonment.

9. Corrupt Practices and Other Related Offences Act

i **Inclusion of an approved procurement Plan:** The F A 2023 has amended this section by mandating the provision of an approved procurement plan, which will be subject to the thresholds outlined in the Regulations.

10. Ministry of Finance (Incorporated) Act

i. The FA 2023 establishes a Governing Council, Executive Board, and a Management Team, which are appointed by the President upon recommendation by the Minister responsible for Finance. This structure is designed to ensure effective administration and management of the Corporation, strategic direction, and good governance.

ii. The Corporation is empowered to develop, adopt, amend, revoke or supplement appropriate regulations, codes, and internal guidelines to enhance its performance and ensure consistency with the provisions of the Principal Act.

11. Tertiary Education Trust Fund (Establishment Etc.) Act

i. **Increment of Tertiary Tax:** The initial tax charged on tertiary education was at the rate of 2.5% pursuant to section 1(2) of the Tertiary Education Trust Fund (Establishment Etc.) Act. The FA 2023 has however increased the rate of the tertiary education trust fund tax to 3%. This tax is charged annually.



BUSINESS FACILITATION (MISCELLANEOUS PROVISIONS) ACT 2023

The Business Facilitation (Miscellaneous Provisions) Act 2023 also known as the “Omnibus Act” or the “Act”, aims to enhance the business-friendly environment in Nigeria. Enacted under the guidance of the Presidential Enabling Business Environment Council, the Act focuses on simplifying regulatory requirements, ensuring transparency, efficiency, and productivity to stimulate economic growth. President Muhammadu Buhari signed the Bill into law on February 14, 2023, as part of the Federal Government's initiatives to create a conducive environment for micro, small, and medium-sized enterprises (MSMEs) in Nigeria.

This legislation achieves its primary goal of easing business operations in Nigeria by revising several key laws, including the Companies and Allied Matters Act (“CAMA”), Nigerian Export Promotion Council Act, Customs and Excise Management Act, Export Prohibition Act, Financial Reporting Council Act, and more. By streamlining administrative processes and removing bureaucratic bottlenecks, the Act significantly contributes to fostering a more favourable and efficient business landscape in the country.

Highlights of some of the key provisions of the Act:

1. Transparency and Efficiency Requirement: The Omnibus Act mandates Ministries, Departments and Agencies (“MDAs”) to enhance transparency and efficiency by publishing comprehensive lists of requirements within 21 days of its commencement. These lists, outlining procedures for obtaining products and services, must be readily accessible on the MDAs' websites, helpdesks, and designated offices. Additionally, the Act compels MDAs to specify timeframes for the provisions of their services and/or products. Failure to communicate approval or rejection of applications within the stipulated time would result in automatic approval of such applications. MDAs are required to maintain at least two communication modes for official decisions, with the preferred mode published on their website. In case of rejection, the MDA must promptly communicate the grounds for rejection within the stipulated timeline.

Furthermore, the Act mandates the issuance of certificates for granted applications within 14 days. These provisions aim to streamline processes and ensure timely communication in public service delivery.

2. **Service Level Agreement:** Ministries, Departments and Agencies (MDAs) must draft concise Service Level Agreements (SLAs) outlining the range of services, processing timelines, documentation requirements, fees, application procedures, and redress mechanisms. Products and services covered under the Act include permits, licenses, waivers, tax processes, filings, approvals, registrations, certifications, and others aligned with the MDA's functions. Once published on the MDA's website, the SLA becomes legally binding for application processing. This approach aims to provide transparent operational procedures, ensuring clarity for the public on MDA functions and processes.
3. **Overhaul of Port Operations:** The new law prohibits touting at all Nigerian ports, imposing a minimum fine of N1,000,000.00 (One Million Naira), a six-month jail term, or both for violators. Employees on duty must wear uniforms and carry official identification cards, while those off-duty are restricted from ports unless authorized by the head of the MDA. Any official soliciting or receiving bribes faces removal from office, disciplinary measures, and criminal proceedings. Additionally, the law introduced a single interface customer at ports and airports to enhance efficiency and combat corruption. This interface station captures, tracks, and records information on goods, transmitting it weekly to relevant offices and the National Bureau of Statistics for monitoring.
4. **Introduction of Deemed Approvals:** The Act has introduced and provided a statutory framework for deemed approval by MDAs. Section 4 of the Act stipulates that if the relevant MDA fails to notify the applicant of the approval or rejection, along with reasons within the timeframe indicated in the published list of the MDAs, the application will be deemed approved. An acknowledged or electronic copy of a submitted application can serve as proof. Moreover, if an application is rejected within the stipulated timeframe, the MDA must notify the applicant of the rejection and provide reasons for it. If an application is deemed granted, the applicant may request the relevant MDA to issue a certificate or document as evidence of the grant. The MDA is obligated to issue this certificate or document within 14 days of the request. If the MDA fails to issue the certificate within 14 days, the notice itself constitutes evidence of the deemed approval of the application and serves as the "certificate or document in evidence of the grant."
5. **Automation of Corporate Administration Processes:** The Act mandates the Registrar-General of the Corporate Affairs Commission (CAC) to ensure that all application processes at the CAC are fully automated, from start to completion, within 14 days of the commencement of the Act.
6. **Amendment of Companies and Allied Matters Act (CAMA) 2020:** The Omnibus Act introduced crucial amendments to CAMA 2020, revising its provisions and incorporating new ones for better clarity and alignment with global best practices.

Key changes include:

- i. **Exemption of Foreign Companies:** The Omnibus Act introduces Section 78(3) (c) which now allows foreign companies to be exempted from registration, by an Act of the National Assembly. This is to the effect that where an Act of the National Assembly expressly names a foreign company as exempted from registration as a Nigerian company, such a company is not required to register as a Nigerian company.
- ii. **Increase in Share Capital:** Amendments to Sections 127(1) and 149(1) provide flexibility for companies to increase share capital through board resolutions, reducing the constraints imposed by general meetings. A company can now increase its issued share capital by the allotment of new shares provided that authorization has been granted either by shareholders in a general meeting or through the company's articles, empowering the board to issue such resolutions. Consequently, a company may have to amend its articles to empower the directors to increase its share capital where this is not already provided in its articles. The company may in the alternative, have its members sign a resolution empowering the directors to do so, while setting the parameters for the exercise of this authority.
- iii. **Pre-Emptive Rights of Shareholders:** Section 142(2)(c) establishes a maximum timeline of 21 days for existing shareholders to accept or decline share offers, thereby enhancing transparency.
- iv. **Return of Allotment of Shares:** Section 154(1) mandates companies to submit a return on allotment of shares to the Corporate Affairs Commission within 15 days, thus streamlining the reporting period.
- v. **Share Certificate:** Section 171(7) permits electronic share certificates, acknowledging the transition to digital documentation.
- vi. **Instrument of Transfer:** Section 181(1) substitutes "certificate of transfer" with "instrument of transfer," aiming to clarify the terminology.
- vii. **Fixed Charge Holder:** Section 207 grants priority to fixed charge holders over company debts.
- viii. **Definitions:** Section 222 defines key terms such as "Cash," "financial collateral," "financial instrument," and "security interest."
- ix. **Electronic Meeting and Voting:** Sections 244(1) and 248(1) allow companies to hold electronic general meetings and introduce electronic voting for resolutions, thus leveraging technology for efficiency.

- x. **Independent Directors:** Section 275(1)(2) amends the compliance obligation for public companies, by reducing the minimum requirement of independent directors to one-third of all directors.
 - xi. **Disqualification from Appointment as Director:** Section 283 limits disqualification grounds to fraud, dishonesty, and unethical conduct, allowing for greater flexibility in director appointments.
 - xii. **Accounting Standards:** Amendments to Section 378(1) now require compliance solely with accounting standards prescribed by the Financial Reporting Council of Nigeria. This eliminates the dual compliance requirement of also adhering to the accounting standard as provided in the First Schedule of CAMA.
 - xiii. **Winding Up:** The Act, in Section 572(a), has amended the compulsory ground for winding up of companies by court in relation to debt. The debt amount that qualifies as the “inability of a company to pay debt” has been amended from N200,000 to an amount to be determined by a regulation of CAC.
7. **Amendment of the Custom and Excise Management Act:** The Omnibus Act defines Single Window in Section 2 as a platform or facility enabling entities engaged in trade and transportation to submit essential import, export, or transit data required by various government departments, authorities, or agencies through a unified entry point interface. Sections 18A and 18B of the Omnibus Act establish a Single Window platform to facilitate trade in Nigeria. Furthermore, it shortens the timeframe for resolving disputes in buyers' appeals to the Nigeria Customs Service (NCS) when dissatisfied with the valuation of imported goods.
8. **Amendment of the Export (Prohibition) Act:** According to the new law, Section 1 of the Export (Prohibition) Act empowers the Minister of Finance with the responsibility to recommend goods to be prohibited for exportation.
9. **Amendment of the Financial Reporting Council Act:** As amended, Section 59(3) stipulates that any legislation governing the structure and details of financial statements in Nigeria must adhere to the standards, regulations, rules, and statements issued and adopted by the Financial Reporting Council of Nigeria.
10. **Amendment of Foreign Exchange (Monitoring and Miscellaneous Provisions) Act:** Section 6(1), as amended, empowers the Central Bank of Nigeria to revoke the appointment of an Authorized Dealer or Authorized Buyer under various conditions. These conditions include failure to use the license within 30 days, failure to report exchange transactions within six months from the license date, withholding material information known to the licensee, and failure to comply with directives under the Act, among others.

11. **Amendment to the Immigration Act:** Section 20(8) and (9) now establish a 48-hour timeframe for issuing or rejecting entry visas to Nigeria. It also requires providing reasons for rejection within two days of receiving valid applications. The Act mandates the publication of visa requirements and procedures, including estimated timeframes, on immigration-related websites, embassies, high commissions, and all Nigerian ports of entry.

The amendment in Section 36(4), (5), and (6) now requires non-Nigerians to obtain written consent from the Comptroller General of Immigration before practicing any profession, establishing, or acquiring a business or a limited liability company. Previously, such approval was granted by the Minister of Interior. Additionally, any changes to business permits must be notified to the Comptroller General. This amendment redefines the Minister's role to policy-making, while the Immigration Service handles all approvals related to entry for business purposes.

12. **Amendment to the Industrial Inspectorate Act:** The minimum capital expenditure threshold for businesses seeking a Certificate of Acceptance of Fixed Assets (CAFA) has been revised to N5,000,000.00 (Five Million Naira) or as prescribed by the Minister of Industries through Regulation. Consequently, companies will now only need to obtain CAFA for fixed asset additions valued at N5,000,000.00 (Five Million Naira) million or more, effective from the commencement date of the Act.
13. **Amendment to the Industrial Training Fund (ITF) Act:** Section 6(1)(2)(3) of the Omnibus Act now mandates employers with 25 or more employees to contribute 1% of their payroll to the ITF, amending the previous requirement under the ITF Act that applied to businesses with 5 or more employees or generating over N50,000,000.00 (Fifty Million Naira) in annual revenues. The Act exempts employers registered in free trade zones from ITF contributions, aiming to focus on larger organizations. The Minister, with the approval of the Federal Executive Council, has the authority to adjust the contribution rate.
14. **Amendment of Investment and Securities Act:** An important amendment to Section 67(1)(a) and (b) of the Investment and Securities Act removes the restriction on private companies, now allowing them to invite the public to acquire their shares.
15. **Amendment of the National Housing Fund Act:** The Act modifies Section 4(1), (2), (3), and (4) of the National Housing Fund Act regarding contributors to the Fund. The amendment mandates employees earning the national minimum wage and above in the public sector or self-employed individuals to contribute 2.5% of their monthly income to the National Housing Fund. However, employees in the private sector now have the option to contribute to the Fund, although section 9 of the National Housing Fund Act, which was not revised, still imposes an obligation on the employers to deduct and remit the contribution to the Fund. An annual interest rate of 2%, or as determined by the Bank, will apply to the contributions. The Federal Government may provide financial grants to the Fund.

16. **Amendment of the National Office for Technology Acquisition and Promotion Act:** Section 5 was amended to incorporate the term "thereof," stating that companies within the initial two years of business operation will not be subject to late registration penalties if such contracts are registered before the conclusion of their second year of business operation.
17. **Amendment of National Planning Commission Act:** Section 3(2)(f) was amended to include "Director-General of the Infrastructure Concession Regulatory Commission."
18. **Amendment of Nigerian Customs Service Board Act:** Section 3(b)(iii) was amended to adopt modern mechanisms of operation and formulate regulations for undertaking the activities of the Service.
19. **Amendment of the Nigerian Investment Promotion Commission (NIPC) Act:** The Omnibus Act, amended Section 20(3), now requires Nigerian companies acquiring foreign participation post-commencement of business to register with the Commission within three months of such acquisition. This addresses the previous gap where only companies with foreign shareholding at incorporation were registered, rather than all companies with foreign participation.

The newly introduced Section 22 mandates the Commission to specify priority investment areas, their benefits, and incentives. It also authorizes the negotiation of specific incentive packages for strategic investments. Criteria for determining strategic investments and details of special incentives will be published in the Federal Gazette and on the Commission's website.

20. **Amendment of Nigerian Oil and Gas Industry Content Development Act:** Section 106 was amended by defining "Nigerian Independent Operators" to mean a Nigerian Company.
21. **Amendment of Nigerian Ports Authority Act:** Section 7 of the Nigerian Ports Authority Act was amended to eliminate unauthorized personnel from ports and establish facilities for creating and maintaining a single window. This single window will harmonize and coordinate all operations mandated by law for government authorities and agencies in Nigeria, and it will be centralized within the ports.
22. **Amendment of Patents and Designs Act:** Paragraph 13A has been included in the First Schedule, granting power to the Minister to prescribe through regulation, the procedure for the application, grant, use and withdrawal of compulsory licenses.
23. **Amendment of Pension Reforms Act:** In the revised Pension Reforms Act, Section 89(2) allows pension assets to be utilized for securities lending, subject to approval from the National Pension Commission (PenCom). Additionally, pension fund administrators (PFAs), following the Commission guidelines, can allocate a portion of pension assets in the retirement savings account (RSA) for equity contribution in residential mortgages and securities lending.

24. **Amendment of Standards Organization of Nigeria Act:** Following the amendment of the Standard Organization of Nigeria (SON) Act, section 5 now empowers SON to investigate the quality of imported facilities, materials, and products, and to establish a certification system. SON is authorized to create an inventory of products for standardization and register regulated items. Section 29(1) has reduced the notice period for legal action against SON from three months to 30 days, with a legal obligation for the director-general to seek a court order in cases related to actions against detrimental or hazardous goods.
25. **Amendment of Trademarks Act:** The Trademarks Act mandates registration for specific commodities or classes of goods. Without this, legal action for trademark infringement on an unregistered mark is not viable. Initially, the Act lacked a definition for "goods," thereby creating uncertainty. However, the recent amendment broadened the definition of goods under Section 67 to include services. The revised definition clarifies that a trademark relates to goods or services. This enhances precision in its definition and expands its scope to cover services provided by an individual.

It is hoped that the amendments by the BFA will establish a more favorable business environment for micro, small, and medium-sized enterprises (MSMEs) in Nigeria, particularly given Nigeria's recent abysmal ratings in the global ease of doing business list.

THE NATIONAL MENTAL HEALTH ACT 2023

On the 5th of January 2023, the Federal Government signed into law Nigeria's first Mental Health Bill now known as the National Mental Health Act. The Act is a significant step forward for mental health in Nigeria as it seeks to promote and protect the lives of people suffering from mental illnesses while also addressing and correcting the flaws in the Lunacy Act.

The objective of the Act includes:

- 1.To provide direction for a coherent, rational, and unified response to the delivery of mental health services in Nigeria.
- 2.To promote and protect the fundamental human rights and freedom of all persons with mental health conditions and ensure that their rights are guaranteed.
- 3.Ensure a better quality of life by facilitating access to integrated, well-planned, effectively organised and efficiently delivered mental healthcare services in Nigeria.
- 4.Promote the implementation of officially sanctioned national minimum standards for mental health services in Nigeria.
- 5.Facilitate the recovery process of individuals with mental health conditions and bolster their rehabilitation and integration within the community.
- 6.Facilitate the adoption of a community-based approach to providing mental health care services.
- 7.Facilitate the coordination of mental health care delivery in Nigeria.

The Act also replaced the word "lunacy" with "mental health" which encompasses a broader meaning.

The Act promotes and protects the human rights and freedom of persons with mental health conditions from all forms of abuse, torture, violence, denial of employment and other opportunities. It further protects their right to voluntary admission and treatment, permitting involuntary admission only when necessary and in the best interest of the mentally ill patient. The Act also criminalizes the violation of the rights of people with mental conditions, prescribing a fine of N500,000 (Five Hundred Thousand Naira) or a term of imprisonment of at least one year, upon conviction.

The implication of this is that businesses or organizations are prohibited from discriminating against individuals with mental health conditions, preventing them from accessing employment or other benefits and opportunities available to the general population. Failure to adhere to this prohibition may result in legal consequences, including imprisonment or the imposition of fines as stipulated by law.

STUDENT LOANS (ACCESS TO HIGHER EDUCATION) ACT

On June 12, 2023, the Federal Government signed the Students Loans (Access to Higher Education) bill into law, making it an Act of the National Assembly (referred to as “the Act”). The Act repealed the Nigeria Education Bank Act of 2004, to provide easy access to higher education for indigent Nigerians through interest-free loans from the Nigerian Education Loan Fund. This fund was established with the aim of providing education for all Nigerians and addressing related matters.

One of the key provisions under the Act is the establishment of the Higher Education Loans Fund to be domiciled with, managed, and administered by the Central Bank of Nigeria (CBN) through the money deposit banks in Nigeria. The Fund is to be sourced from various channels, including education bonds, education endowment fund scheme, 1% of all taxes, levies and duties accruing to the Federal Government from the Federal Inland Revenue Service (FIRS), the Nigerian Immigration Service and the Nigerian Custom Service, as well as 1% of all profits accruing to the Federal Government arising from oil and other minerals.

Eligibility of Applicants under the Act

The Act clearly delineates conditions precedent that must be met before an applicant can have access to loans. Interested applicants must comply with the following conditions:

- a) the applicant must have secured admission into any of the Nigerian universities, polytechnics, colleges of education, or any vocational school established by the Federal Government or the Government of any State of the Federation;
- b) the applicant’s income or family income must be less than N500,000 per annum;
- c) the applicant must provide at least two guarantors, and each guarantor shall be a civil servant of at least level 12 in the service, a lawyer with at least 10 years post-call experience, a judicial officer, or a justice of peace.

Repayment of Loan by Applicants

The disbursed loan shall be repaid two years after completion of the National Youth Service Corps Programme. Repayment shall be by direct deduction of 10% of the beneficiary's salary at source by the employer and credited to the Fund. However, where the beneficiary is self-employed, the beneficiary shall remit 10% of their total monthly profit to the Fund.

The Act is considered a welcome development in keeping with the Federal Government's objective of improving the educational sector at the higher education level. However, the Act is far from achieving the intended objectives, due to the cumbersome conditions set for applicant eligibility.

FINANCIAL REPORTING COUNCIL OF NIGERIA (AMENDMENT) ACT

On 3rd May 2023, the Financial Reporting Council of Nigeria (Amendment) Bill was passed into law, to become an Act of the National Assembly (referred to as the "Act" or "Amendment Act"). The Act did not repeal the Financial Reporting Council of Nigeria Act, 2011 (the "Principal Act" or "FRCN"), but rather it amends the Principal Act. The purpose of these amendments is to streamline the membership of the Governing Board and enhance the capacity of the Financial Reporting Council (referred to as the "Council") to effectively fulfill its regulatory responsibilities concerning financial reporting and corporate governance in Nigeria.

It is worth noting that the Act applies to professionals or public interest entities (PIEs) obligated to adhere to accounting and financial reporting standards outlined in the Act. A significant provision of the Act involves broadening the scope of individuals covered by PIEs. Previously, the Principal Act pertained only to private companies that submitted returns to regulatory bodies other than the Corporate Affairs Commission (CAC) and the Federal Inland Revenue Service (FIRS). However, the Amendment Act significantly expands this scope, encompassing private companies that were not previously addressed in the Principal Act.

Highlights of the Amendment Act

1. **Revised Payment of Annual Dues:** The Amendment Act has revised the payment of annual dues for registered professionals, public quoted companies, and public interest entities (PIEs) accordingly. For registered professionals, the annual dues have been increased from a minimum of N5,000.00 (Five Thousand Naira) annually to N10,000.00 (Ten Thousand Naira). Conversely, for public quoted companies, the annual dues range between 0.002% to 0.10% based on their market capitalization, while PIEs range from 0.02% to 0.05% based on their annual turnover.

2. **Payment dates for Annual Dues:** In an effort to address the gap present in the Principal Act, the Amendment Act has explicitly introduced payment deadlines for annual dues. For individual professionals and professional firms, annual dues must be paid no later than 60 days from 1st January of each year. Conversely, for PIEs and other entities, annual dues must be paid no later than 120 days from the financial year.
3. **Registration of Professionals and Validity Period:** Unlike the Principal Act, which mandated professionals to renew their registration with the Council after a validity period of 2 years, the Amendment Act now requires annual renewal of registration with the Council.
4. **Increased penalties for unregistered persons:** The Amendment Act has escalated penalties for unregistered professionals who hold appointments or offer professional services to public interest entities. Previously, under the Principal Act, unregistered professionals faced a fine of up to N500,000.00 (Five Hundred Thousand Naira) or imprisonment for a term not exceeding 6 months, or both. However, with the Amendment Act, the penalties for unregistered individuals have been surged to a fine of N5,000,000.00 (Five Million Naira) or imprisonment for a term not exceeding 6 months upon conviction.

The Act has introduced a new section 61A, which grants additional powers to the Council to enlist the assistance and cooperation of any law enforcement agency in carrying out its duties under the Act. Furthermore, the Act stipulates that law enforcement officers must aid and support an authorized officer in executing any warrant of distraint and in levying distraint. Under the Amended Act, FRCN officials, armed with a warrant issued by a judicial officer and accompanied by a group of law enforcement officers, are empowered to:

5. **Power of the Council to search Purpose of Investigation and Inspection and execute warrant of distraint:** The Act has introduced a new section 61A, which grants additional powers to the Council to enlist the assistance and cooperation of any law enforcement agency in carrying out its duties under the Act. Furthermore, the Act stipulates that law enforcement officers must aid and support an authorised officer in executing any warrant of distraint and in levying distraint. Under the Amended Act, FRCN officials armed with a warrant issued by a judicial officer, and accompanied by a group of law enforcement officers, are empowered to:
 - Enter premises covered by the warrant, seal off the premises, and conduct a search to seize and take possession of any books, documents, or other articles believed to have been used in the commission of an offense.
 - Inspect, make copies of, or extract information, including digital copies, from any book, record, document, or computer, irrespective of the medium used for storage or maintenance.
 - Search any person present on such premises.

- Open, examine, and search any article, container, or receptacle.
 - Remove any obstruction to such entry, search, seizure, or removal, using reasonable force if necessary.
6. **New definition of Public Interest Entities:** The Amendment Act has broadened the scope of public interest entities, now encompassing: (a) governments and government organizations, (b) listed entities on any recognised exchange in Nigeria, (c) non-listed entities subject to regulation, (d) public limited companies, (e) private companies serving as holding entities for public or regulated organizations, (f) concession entities, (g) privatized entities with government retained interest, (h) entities contracted by any level of government for public projects exceeding an annual sum of N1 billion, funded by public resources, (i) government licensees, (j) and all other entities with an annual turnover of N30 billion or more.
7. **Limitation of suits against officers of the Council and Introduction of the Pre-Trial Notice:** Under the Amendment Act, no individual shall initiate legal action against the Council until 30 days after serving written notice to the Council by the intending plaintiff or their representative. In essence, the intending plaintiff or their representative must wait for the lapse of 30 days following written notice served on the Council, before proceeding with the intention to file a lawsuit.

The Act also stipulates that the written notice must clearly specify the following: (a) the cause of action, (b) the details of the claim, (c) the name and address of the intending plaintiff, and (d) the desired relief.

The amendment addressed the overall organizational framework of the Commission and aimed to strengthen supervisory, governance, regulatory, compliance, enforcement, and punitive measures related to the Act. Firstly, the FRCN has synchronized its approach with other regulatory bodies, focusing on corporations facilitating the movement of funds. This is evident in the broadening of the scope and definition of Public Interest Entities (PIEs).

Secondly, the revised Act has rectified the imbalance in monetary penalties to better reflect current values and realities. Thirdly, there is a significant concern about the extensive authority granted to FRCN officials in terms of investigation and search powers to enforce the act and related regulations. It is advisable for this authority to be exercised strictly within the bounds of the law.

We commend the salutary provisions of the Act. The draftsman has amended the Principal Act to align its provisions with best reporting standards. In a bid to ensure maximum compliance with the provisions of the Act, the Council has been granted additional powers to achieve the intent of the draftsman. Companies and business owners are therefore advised to seek legal advice where necessary to ensure compliance with the Act.

NIGERIAN DEPOSIT INSURANCE CORPORATION ACT

On 28th May 2023, the Nigerian Deposit Insurance Corporation Bill was assented to, becoming an Act of the National Assembly (the "Act"). The Act, amongst other provisions, repealed the Nigerian Deposit Insurance Corporation Act of 2006, replacing it with a new Act that establishes the Nigeria Deposit Insurance Corporation as the insurer of all insurable deposit liabilities of insured institutions.

The Act has introduced new provisions aimed at safeguarding deposit liabilities of financial institutions authorized to accept deposits from the public. It has empowered the Nigeria Deposit Insurance Corporation (the "Corporation") with additional authority to intervene in failed insured institutions. Notably, the Act now authorizes the Corporation to utilize the rights held by a failed insured institution has under the Global Standing Instruction Scheme operated by the CBN. Furthermore, the Act, in an effort to ensure strict compliance, has prescribed more stringent penalties for obligations imposed on insured institutions.

Key Highlights under the Act

1. **Failure of Participating Financial Institutions to Insure Deposits with the Corporation:** Licensed banks and other financial institutions authorized to accept deposits are mandated to insure their deposits with the Corporation. Under the former Act, the penalty for failure of licensed banks and other deposit-taking financial institutions to insure their deposits with the Corporation was a maximum of N500,000.00 (Five Hundred Thousand Naira) for each day the offence was committed. The Act has elevated the penalty to N50,000,000.00 (Fifty Million Naira) with an additional N5,000,000.00 (Five Million Naira) for each day the offence is repeated in the case of a deposit money bank (DMB); and N5,000,000.00 (Five Million Naira) with a further N200,000.00 (Two Hundred Thousand) for each day the offence is repeated in the case of deposit-taking financial institutions. Principal officers of the licensed bank or deposit taking financial institutions, upon conviction, shall be liable to a fine of N5,000,000.00 (Five Million Naira) or imprisonment for three years, or both.

Insured institutions are mandated by this provision to comply with the insurance of their deposits with the Corporation or face stiffer penalties for failure to do so.

2. **Maximum Claim:** Under the previous Act, in the event of the revocation of the license of an insured institution, depositors were entitled to receive a maximum amount of N200,000.00 (Two Hundred Thousand Naira) in the case of DMBs and N100,000.00 (One Hundred Thousand Naira) in the case of other deposit-taking financial institutions.

However, the Act now stipulates that the amount to be received by depositors in the case of insured institutions not being a Microfinance Bank is N500,000.00 (Five Hundred Thousand Naira) and in the case of a Microfinance Bank, the maximum amount is N200,000.00 (Two Hundred Thousand Naira).

The Provision offers significant comfort to depositors of DMBs as the maximum claim has been increased.

- 3. Application of Global Standing Instruction Scheme and Statutory Right to Funds of Obligors in Insured Institutions:** One of the most innovative provisions in the Act concerns the powers granted to the Corporation regarding the rights of a failed insured institution under the Global Standing Instruction Scheme (GSIS). This authority enables the Corporation, acting as a liquidator, to access the Bank Verification Numbers of obligors in the Industry Customer Account Database through the Nigerian Interbank Settlement System (NIBSS) and to connect to the Nigeria Central Switch on behalf of failed insured institutions.

Furthermore, the Act allows the Corporation, as a liquidator, to access deposits of an obligor of a failed insured institution held in other insured institutions to satisfy the debts owed to the failed insured institution, subject to any prior encumbrances. Consequently, any insured institution must, upon written request from the Corporation, debit the account of an obligor of a failed insured institution for the specified amount and remit it to the Corporation.

This provision significantly broadens the powers granted to the Corporation. It enables the Corporation to pursue obligors of failed institutions rather than solely targeting the failed institution itself.

- 4. Right to set-off obligor's deposit:** The Act grants the Corporation the authority to offset a loan owed by an obligor of a failing or failed insured institution against the insured deposit of that obligor held in the failing or failed insured institution, or any other failed insured institution in liquidation, concerning all proven liabilities owed to the insured institution by the obligor.
- 5. Payment of Insured Deposit:** The Act has reduced the timeframe for paying insured deposit of a failed insured institution from 90 days to 30 days. Additionally, it allows the Corporation to maintain the right of subrogation against a failed insured institution, even if the institution's operating license is restored or it regains solvency. Furthermore, within 30 days after the failure of an insured institution, the Corporation has the authority, to appoint another insured institution to take over the insured deposits of the failed insured institution in the interest of depositors or the public.
- 6. Special Examination:** The Act grants the Corporation the authority to appoint two or more qualified individuals to conduct a special examination or investigation of the books and affairs of an insured institution. It also mandates any insured institution that is unable to meet its obligations or is on the verge of suspending payments, to promptly notify the Corporation. Failure to do so results in severe penalties: for DMBs, a fine of N50,000,000.00 (Fifty Million Naira); and for other deposit-taking financial institutions, a fine of N10,000,000.00 (Ten Million Naira). Additionally, the responsible director who fails to notify the Corporation is subject to a fine of N5,000,000.00 (Five Million Naira) upon conviction.

7. **Stay of Pending Suits:** Importantly, all ongoing legal actions against an insured institution shall be suspended if the Corporation has initiated the liquidation process of the institution and has filed a motion to halt all other legal proceedings involving the institution.
8. **Priority of Claims:** The Act specifies that the deposit obligations of an insured institution shall be given precedence over all other liabilities of the institution in situations where the institution fails to meet its financial obligations, suspends payments, or undergoes management and control changes by the CBN or has its license revoked. This provision serves to prioritize the insured deposits of customers above any other debts owed by the insured institution.
9. **Interim Dividend Payment:** The Act allows the Corporation to issue interim dividend payments to depositors from the proceeds of realized assets of the failed insured institution.

Additionally, the Corporation can provide advance interim dividend payments to depositors under specific conditions:

- i. the net realizable value of the assets of the failed insured institution can be reasonably estimated;
- ii. the failed insured institution has no cases of significant embezzlement or other significant fraud or abuses that the losses are difficult to determine;
- iii. the estimated amount of the advance payment and the interest, at a rate to be determined by the Corporation which shall not be more than the prevailing Monetary Policy Rate, can be reimbursed by the estimated net realizable value of the assets; and
- iv. the amount of the advance payment shall not exceed 30% of the total excess of uninsured deposit claims of any failed institution.

Although the payment of interim dividends by the Corporation is not obligatory, as indicated by the language of the Act, this provision is innovative and will help bolster the confidence of depositors in failed insured institutions

THE COPYRIGHT ACT 2022

The Copyright Act of 2022 (CA), enacted on March 17, 2023, aims to safeguard copyright and neighbouring rights, regulate, and administer copyright effectively, and enforce copyright in Nigeria's digital environment. The Act supersedes the Copyright Act Cap C28 Laws of the Federation of Nigeria 2004, introducing significant changes to the existing copyright framework. These changes include the registration of copyright-eligible works, protection of content for individuals with disabilities, implementation of takedown procedures for infringements, and broadened protections for performers and copyright holders.

According to the Act, copyright owners have the option to register their works with the Nigerian Copyright Commission (NCC) to provide evidence of ownership and the details recorded in the Register. Moreover, the Act introduces takedown procedures for infringements, allowing copyright owners to request the removal of infringing content from online platforms.

The Act delineates items ineligible for copyright protection, such as ideas, procedures, processes, systems, methods of operation, concepts, discoveries, mere data, official texts of legislative or administrative nature, state symbols or insignia, among others. Additionally, it broadens the definition of “copy” to encompass ‘digital copy’.

Moreover, the Act establishes an individual’s right to object to being falsely attributed as the author of a work and imposes limits on the duration of moral rights, previously deemed “perpetual” under the former Act, now subsisting for the duration of the copyright in the work. Additionally, it encompasses the exclusive right to make the work available to the public through wire or wireless means, enabling public access, independent of location or time chosen by the audience. Furthermore, the Act mandates broadcast companies to provide remuneration to performing artists and record labels for broadcasting any sound recording previously released for commercial purposes.

Additionally, the Act enhances the authority of the Commission by granting it the power to block or disable access to any content, link, or website hosted on a system or network, that it reasonably believes infringes copyright under the Act, either independently, or with assistance. Furthermore, with the Minister’s consent, the Commission is authorized to prescribe anti-piracy measures such as designs, labels, marks, impressions, or any other devices for use in connection with copyrighted works.

Moreover, the Act imposes harsher penalties for piracy-related offenses and criminalizes the circumvention of technological protection measures implemented to safeguard access to works protected under the Act.

THE NIGERIA CREATIVE INDUSTRIES DEVELOPMENT BILL

The Nigeria Creative Industries Development Bill emerged from a partnership between Nigeria’s creative sector and the previous Presidential administration, aiming to revolutionize the nation’s creative landscape through regulation and actionable strategies. Its primary goal is to foster the growth and advancement of the creative industries in Nigeria by instituting a legal framework conducive to their sustainability.

The bill outlines three primary objectives: Firstly, to establish a legal, regulatory, and institutional framework conducive to nurturing a sustainable environment for Nigeria’s creative industries. Secondly, to set up a Creative Impact Fund aimed at facilitating the advancement and expansion of the creative sector. Thirdly, to establish the Creative Industries Development Commission.

This regulatory framework for the creative industry is anticipated to bolster the nation's economy by generating employment opportunities, attracting foreign investment, and showcasing Nigerian culture and ingenuity. The Bill intends to achieve these goals by fostering the development of creative talents and establishing a Creative Impact Fund to foster the sector's growth.

The Bill also aims to create the Creative Industries Development Commission, tasked with advancing and nurturing the growth of creatives and professionals within the creative industry. Additionally, the Commission will oversee the management of the Creative Impact Fund, aimed at offering financial assistance for the expansion and development of the creative sector. Ultimately, the objective is to position Nigeria as the premier destination for investments in the creative industry within Africa, while concurrently boosting employment opportunities within the creative industries.

THE NIGERIA DATA PROTECTION ACT 2023

The Nigeria Data Protection Act of 2023 (NDPA), enacted on June 12, 2023, serves to regulate the handling of personal data belonging to Nigerian citizens, encompassing its collection, utilization, processing and oversight. With a primary focus on upholding the fundamental rights and freedoms enshrined in the 1999 Constitution of the Federal Republic of Nigeria, the NDPA extends its jurisdiction to instances where data control or processing occurs within Nigeria's borders or where the personal data of Nigerian individuals is managed by entities outside the country. Central to its enforcement mechanism is the establishment of the Nigerian Data Protection Commission (NDPC), tasked with enforcing the Act's provisions and ensuring adherence by data controllers and processors.

The NDPA sets forth principles and legal grounds governing the handling of personal data. Additionally, it introduces the necessity of a data protection impact assessment (DPIA), which data controllers must conduct when processing personal data that presents a substantial risk to the rights and freedoms of data subjects. Moreover, the NDPA stipulates that data controllers of significant importance must appoint a data protection officer (DPO) to oversee compliance efforts. Furthermore, the Act addresses the processing of personal data pertaining to children or individuals lacking the legal capacity to provide consent.

The Act grants data subject's various rights, including the right to be informed, the right to erasure, the right to withdraw consent, the right to object to the processing of personal data, and the right not to be subject to decisions based solely on automated processing if it yields significant legal or similar effects. Additionally, the NDPA governs the basis and adequacy of protection for cross-border transfers of personal data and outlines procedures that data controllers and processors must follow in the event of a data breach, with prescribed penalties for non-compliance with the NDPA provisions. The NDPC is authorized to enact regulations to achieve its objectives under the Act.

THE ARBITRATION AND MEDIATION ACT 2023

The enactment of the Arbitration and Mediation Act, 2023 (AMA) in 2023 represented a pivotal moment in the landscape of dispute resolution. Notable provisions of this law highlight significant developments in arbitration and mediation practices:

1. **Grounds for setting aside an award:** Prior to the enactment of the Arbitration and Conciliation Act (ACA) Cap 18, LFN 1990, commonly referred to as the old law, courts possessed wide discretion in determining whether to uphold or disregard an arbitration agreement.

Under the previous provisions, a party could contest an arbitration agreement with the "leave of the Court or judge." Moreover, a court could proceed with proceedings, even with a valid arbitration agreement in place, if it found "sufficient reason why the matter should not be referred to arbitration in accordance with the arbitration," or if the defendant failed to show that they are "ready and willing to undertake all necessary actions for the proper conduct of the arbitration." However, the new framework introduced by the Arbitration and Mediation Act (AMA) has eliminated this discretion. It now mandates courts to enforce an arbitration agreement by suspending proceedings and directing parties to arbitration unless the court determines that the agreement is "void, inoperative, or incapable of being performed."

2. **Award Review Tribunal:** Under the previous regime, there was considerable debate surrounding the authority of an arbitral tribunal to grant pre-award interest until the recent case of Units Environmental Services Limited v. Revenue Mobilization Allocation & Fiscal Commission. In this case, the Supreme Court ruled that an arbitral tribunal could indeed award pre-award interest. However, with the enactment of the Arbitration and Mediation Act (AMA), there is now a clear provision explicitly empowering an arbitral tribunal to award not only pre-award interest but also simple and compound interest, either as pre-award or post-award interest.
3. **Expedited Proceedings:** The AMA introduces specialized rules aimed at expediting proceedings when arbitration claims or appeals are brought before Nigerian courts. These rules streamlined standard litigation procedures, remove bureaucratic hurdles, and shorten the time required for arbitration claims and appeals to be resolved. This will notably reduce the duration taken by both the court of first instance and appellate courts to adjudicate on arbitration matters.
4. **Mediation:** Another significant change introduced by the AMA is the replacement of conciliation with mediation as the statutory Alternative Dispute Resolution (ADR) option. This change reflects evolving preferences and practices in dispute resolution.

5. **Writing Requirement:** Similar to the ACA, the AMA mandates that arbitration agreements must be in writing. However, the new law extends this requirement to recognize that an arbitration agreement is deemed written if its content is documented in any written form, whether the legal relationship was entered orally, through conduct, or other means. The writing requirement is satisfied if the information is contained in accessible electronic communication, including data messages.
6. **Default Number of Arbitrators:** Under the AMA, a sole arbitrator is now the default option unless otherwise agreed upon by the parties. This reduces the number of default arbitrators from three, as stipulated in the repealed law. Additionally, the appointment process for arbitrators is clarified, with the Director of the Regional Centre for International Commercial Arbitration, Lagos, designated to make appointments when parties do not specify a procedure or appointing authority.
7. **Emergency Arbitrator Proceeding:** The AMA introduces the option for parties to request the appointment of an emergency arbitrator for urgent relief. This request can be made concurrently with or after the submission of a request for arbitration but before the constitution of the arbitral tribunal. The proceedings of the emergency arbitrator offer flexibility, allowing for meetings in person or through various communication channels.
8. **Third-Party Funding Agreement:** The AMA introduces innovative provisions regarding third-party funding, clarifying that common law doctrines of champerty and maintenance do not apply to third-party funding arrangements in arbitration seated in Nigeria or arbitration-related proceedings before a Nigerian court. The associated costs of obtaining third-party funding are considered part of the arbitration costs allocated by the tribunal.
9. **Limitation Period:** The AMA deals with the application of limitation law to arbitration and mediation proceedings, specifying that statutory limitation periods apply. It states that the limitation period for enforcing arbitral awards starts from the date of receiving the award. If an award is set aside, the limitation period excludes the time between the arbitration's commencement and the annulment of the award. During mediation, the limitation period is paused and resumes if mediation concludes without a settlement.
10. **Consolidation, concurrent hearings, and joinder of parties:** Unlike the Arbitration and Conciliation Act (ACA), the Arbitration and Mediation Act (AMA) permits consolidation, concurrent hearings, and the joinder of parties. The authority of the arbitral tribunal in these matters depends on the parties' consent, in line with the principle of party autonomy. Additionally, the tribunal can join a party to the arbitration only if the additional party is bound by the underlying arbitration agreement before the tribunal.

11. **Lien on an Award:** A noteworthy addition in the AMA is the provision granting the arbitrator the authority to exercise a right of lien on the award in cases where the arbitration fees remain unpaid.

In summary, the AMA supersedes outdated arbitration case law, providing clear statutory provisions that enhance stability, speed, and efficiency in dispute resolution. This alignment with global trends in international arbitration reinforces Nigeria's status as a leading destination for cross-border dispute settlement in Africa.

A. EVIDENCE (AMENDMENT) ACT 2023

On June 12, 2023, the Federal Government signed the Evidence (Amendment) Act 2023 into law. The Amendment Act was primarily aimed at reflecting technological advancements in the taking of evidence, especially in court proceedings.

Amendments to the Evidence Act 2011

The recent Amendment Act has made significant changes to Section 84 of the Principal Act, particularly regarding the admissibility of computer-generated documents. This amendment broadens the definition of "documents" to include "electronic records," recognizing the increasing prevalence of electronic evidence. Consequential adjustments in Sections 84A to 84D facilitate the acceptance of electronic formats, ensuring compliance with legal standards and emphasizing the reliability of digital signatures.

Furthermore, notable revisions to Section 93 of the Evidence Act 2011 explicitly incorporate "digital signature" alongside "electronic signature." This amendment acknowledges the nuanced distinction between the two and strengthens the legal validity of digital signatures, which entail more rigorous authentication requirements. This aligns with the broader goal of embracing digitalization in the realm of evidence.

The recent amendments to Sections 108, 109, and 110 of the Principal Act enable the electronic deposition of affidavits, addressing challenges associated with traditional deposition methods. This practical approach permits virtual depositions through audio-visual means, acknowledging the evolving landscape of legal procedures and enhancing accessibility in legal proceedings.

Additionally, Section 255 of the Principal Act now incorporates provisions for an Electronic Gazette, signaling a transition to electronic dissemination of government laws, regulations, and notices. This forward-looking initiative moves away from traditional paper-based gazettes, aligning with the broader global trend toward digital information dissemination.

To enhance clarity, Section 258 of the Principal Act has been amended to include definitions of key terms relevant to the amendments. Specifically,

definitions for "digital signature" and "electronic signature" seek to provide clarity regarding document authentication. However, an oversight regarding the absence of the Second Schedule specifying electronic techniques for electronic signatures necessitates correction.

In conclusion, these amendments to the Evidence Act demonstrate Nigeria's proactive approach to keeping pace with the global trend of digitalization, especially within the context of our legal system and court proceedings.



REGULATION/GUIDELINES AND POLICIES

REGULATIONS ISSUED BY THE NIGERIAN UPSTREAM PETROLEUM REGULATORY COMMISSION IN 2023

The Nigerian Upstream Petroleum Regulatory Commission (“NUPRC” or the “Commission”) has issued the following Regulations to implement the provisions of the Petroleum Industry Act (PIA). These regulations include the following:

I. Production Curtailment and Domestic Crude Oil Supply Obligation Regulations, 2023

The Regulations, in accordance with the stipulations set forth in Sections 8(c) and 109 of the Petroleum Industry Act (PIA) clearly delineate detailed production curtailment and the management of crude oil utilization, encompassing both export and domestic crude oil supply obligations. Regarding compliance with Domestic Crude Supply Obligations, the Regulations mandate lessees to supply crude oil to Domestic Refineries as designated by the Commission. However, the allotted crude oil may only be sold to holders of crude oil refining licences, whose refineries are operational.

We regard this Regulation as particularly timely, given our concern over the ongoing shortage of feedstocks for modular refineries operating within the country’s borders.

The Commission has diligently intensified efforts to bolster enforcement of domestic crude oil supply obligations, aiming to guarantee sufficient crude oil supply to domestic refineries in Nigeria.

II. Frontier Basins Exploration Fund Administration Regulations, 2023

In line with the mandate outlined in Section 9 of the Petroleum Industry Act (PIA) aimed at enhancing our crude oil production capacity, the Nigerian National Petroleum Company Limited (NNPCL) is obligated to allocate 30% of its profits derived from upstream petroleum operations to the development of frontier basins within the country.

A pivotal provision of the Regulations stipulates that the Commission must establish an escrow account named the “Frontier Exploration Fund Account”. These Regulations lay down fundamental principles guiding the Commission’s execution of its responsibilities regarding Nigeria’s frontier basins and the oversight of the Frontier Exploration Fund. The primary objective is to stimulate investment and attract attention to Nigeria’s frontier basins.

The Nigerian Upstream Petroleum Regulatory Commission (“NUPRC” or the “Commission”) has issued the following Regulations to implement the provisions of the Petroleum Industry Act (PIA). These regulations include the following:

I. Production Curtailment and Domestic Crude Oil Supply Obligation Regulations, 2023

The Regulations, in accordance with the stipulations set forth in Sections 8(c) and 109 of the Petroleum Industry Act (PIA) clearly delineate detailed production curtailment and the management of crude oil utilization, encompassing both export and domestic crude oil supply obligations. Regarding compliance with Domestic Crude Supply Obligations, the Regulations mandate lessees to supply crude oil to Domestic Refineries as designated by the Commission. However, the allotted crude oil may only be sold to holders of crude oil refining licences, whose refineries are operational.

We regard this Regulation as particularly timely, given our concern over the ongoing shortage of feedstocks for modular refineries operating within the country’s borders.

The Commission has diligently intensified efforts to bolster enforcement of domestic crude oil supply obligations, aiming to guarantee sufficient crude oil supply to domestic refineries in Nigeria.

II. Frontier Basins Exploration Fund Administration Regulations, 2023

In line with the mandate outlined in Section 9 of the Petroleum Industry Act (PIA) aimed at enhancing our crude oil production capacity, the Nigerian National Petroleum Company Limited (NNPCL) is obligated to allocate 30% of its profits derived from upstream petroleum operations to the development of frontier basins within the country.

A pivotal provision of the Regulations stipulates that the Commission must establish an escrow account named the “Frontier Exploration Fund Account”. These Regulations lay down fundamental principles guiding the Commission’s execution of its responsibilities regarding Nigeria’s frontier basins and the oversight of the Frontier Exploration Fund. The primary objective is to stimulate investment and attract attention to Nigeria’s frontier basins.

III. Upstream Decommissioning and Abandonment Regulations, 2023.

Decommissioning within the oil and gas industry entails the dismantling of oil installations and associated structures that have reached the conclusion of their operational lifespan. According to the Regulations, each upstream petroleum operator is to submit a thorough decommissioning and abandonment plan to the Commission. The decommissioning and abandonment plan must satisfy specific criteria, including adherence to good international petroleum industry practices. Importantly, offshore operators must adhere to the standards established by the International Maritime Organization for offshore installations and structures as part of their decommissioning and abandonment efforts.

IV. Significant Crude Oil and Gas Discovery Regulations, 2023

The Regulations establish guidelines to ensure the optimal utilization of petroleum resources falling within the scope of a Petroleum Prospecting License, as outlined in the PIA. Within this framework, the Regulations define what constitutes significant crude oil discovery and a substantial discovery of gas. Additionally, the guidelines stipulate that upon completion of the appraisal program by a licensee or lessee, and upon the discovery of crude oil or natural gas meeting the criteria for significant discovery, the licensee or lessee must declare such discovery within 30 days of completing the appraisal program.

This declaration in the form of a notification to the Commission, should include relevant information as specified in the Regulations.

V. Gas Flaring, Venting, and Methane Emission (Prevention of Waste and Pollution) Regulations, 2023

This Regulation, issued by the Commission in the year under review, is another noteworthy initiative. Its purpose is to mitigate the environmental and social impacts linked with gas flaring, venting of natural gas, and fugitive methane emissions into the atmosphere, all while preserving and safeguarding the environment.

Under these Regulations, the Federal Government is granted the right to acquire designated natural gas for flaring without payment of royalty. Gas producers must seek a permit from the Commission to access disposed gas for commercialization. However, this application must exclude any flare gas volume offered in a bid process conducted by the Federal Government or assigned to a Permit holder. Additionally, the application must be made by the gas producer on behalf of a midstream subsidiary corporate entity, whether existing or newly incorporated.

The Commission prohibits Permit holders from assigning their interests or rights under the permit except under certain conditions. The holder must ensure that the transferee meets the minimum technical and financial requirements necessary to qualify as a bid under a Disposed Gas bid or unsolicited proposal process. Additionally, the transferee must obtain prior written approval from the Commission.

VI. The Nigerian Upstream Petroleum Unitization Regulations, 2023

This Regulation aims to establish rules, principles, and procedures for implementing the unitization of oil and gas from a petroleum reservoir that extends beyond the boundaries of a license or lease.

VII. The Nigerian Upstream Petroleum Measurement Regulations, 2023

The guidelines outlined in the Regulations aim to ensure the precise measurement of hydrocarbons produced in upstream petroleum operations and to guarantee an accurate calculation of petroleum revenue accruable to the government. The Regulations mandate lessees to install appropriate metering equipment, with the process involving the lessees engaging licensed metering service providers as outlined in the Regulations.

THE CONSUMER PROTECTION REGULATIONS 2023

The Nigerian Electricity Regulatory Commission (“NERC” or the “Commission”) issued the Consumer Protection Regulations on the 29th of March 2023 to safeguard consumers from the activities of electricity distribution companies in Nigeria. These Regulations apply to all licensees and holders of mini grid permits that have been issued licences/permits to distribute/supply electricity to end-use customers, as well as end-use customers who have contracted for the receipt of electricity supply from distribution licensees.

The Regulations aim to provide a regulatory framework for consolidating existing regulatory instruments of the Commission on the protection of customers in the Nigerian Electricity Supply Industry (NESI) into one regulatory instrument. It also reinforces frameworks for the protection of end-use customers in NESI, promotes electricity access, aligns and updates customer service standards in NESI to conform with international best practices and protects the rights of end-use customers of distribution licensees by specifying the minimum standards of service delivery.

Some Highlights of the Regulations

The Consumer Protection Regulations 2023 introduce some key changes to the standards and procedures for handling consumer complaints.

1. **Establishment of a Consumer Complaints Unit:** The Regulations require Distribution Companies (DisCo) to establish a Consumer Complaints Unit (CCU) responsible for receiving and resolving customer complaints. Complaints, as defined in the Regulations, encompass customers’ expressions of dissatisfaction with the services or actions of a distribution company. Customers are permitted to lodge complaints through various channels, including phone calls, SMS, emails, and any other medium established by the DisCo. Any complaints received must be resolved promptly within fifteen (15) days of receipt, except in cases concerning meter accuracy and bill reconciliation, which must be resolved within one (1) billing cycle of one (1) month. Appeals from the Consumer Complaints Unit can be made to the Commission’s Forum Office after the maximum allowable period of thirty (30) days has elapsed.
2. **Meter reading, billing, cash collection:** The Regulations mandate Distribution Companies (DisCos) to obtain approval from the Nigerian Electricity Regulatory Commission (NERC) for their estimated billing approach. If it is determined that a DisCo has not followed the approved billing methodology for unmetered customers, the DisCo must refund any overcharged amount to the customer in the subsequent billing cycle. Additionally, the Regulations aim to safeguard customers against estimated billing, stipulating that it should only be used in exceptional circumstances and should be based on the consumer’s previous three months of consumption. However, the Regulations do not provide a specific definition of “exceptional circumstances”.

THE DRAFT NIGERIAN COMMUNICATIONS COMMISSION COMPETITION PRACTICES REGULATION, 2023

Amidst the imperatives of adapting to the demands of the ever-evolving digital age, the Nigerian Communications Commission (NCC), the principal regulator of Nigeria's telecommunication sector, initiated moves in 2023 to amend certain existing regulations to fortify the country's communication sector.

As part of its regulatory reforms, the NCC introduced the Draft Competition Practices Regulations 2023 ("Draft Competition Regulations") for stakeholder feedback. These revised regulations seek to amend the current 2007 NCC's Competition Practices Regulations ("NCC Competition Regulations"), with the primary objective of elevating the threshold for transactions necessitating NCC approval.

One of the pivotal amendments in the Draft Competition Regulations pertains to the adjustment of the threshold for NCC approval concerning alterations in the shareholding structure of a licensee. The current NCC Competition Regulations mistakenly mandated NCC approval for transactions impacting over one hundred per cent (100%) of a licensee's total shares. However, the Draft Competition Regulations rectify this by amending the threshold to ten per cent (10%) of the total shares, thereby harmonizing it with paragraph 42 of the Licensing Regulations, 2019, and paragraph 27 (a) of the NCC Competition Regulations.

Furthermore, the Draft Competition Regulations stipulate that any transaction resulting in the conversion of a licensee from a private company to a public limited liability company necessitates prior approval from the NCC.

Although the Draft Competition Regulations have not been enacted yet, their implementation is anticipated to have a substantial influence on the arrangement of transactions within Nigeria's telecommunications sector.

CBN GUIDELINES ON OPERATIONS OF BANK ACCOUNTS FOR VIRTUAL ASSETS SERVICE PROVIDERS (VASPS)

The Central Bank of Nigeria ("CBN") has reversed its stance on cryptocurrency transactions by lifting restrictions on cryptocurrency bank accounts for Virtual Assets Service Providers (VASPs). This change was communicated through a circular dated December 22, 2023, titled "Guidelines on Operations of Bank Accounts for Virtual Assets Service Providers" ("the Guidelines"), directed to all banks and Other Financial Institutions ("OFIs"). The issuance of these guidelines marks the end of the previous ban on banks and OFIs facilitating crypto transactions in Nigeria, ushering in a new era with a comprehensive regulatory framework in place.

It is noteworthy that the CBN had previously issued two public releases, regarding virtual currency operations. The first, dated January 12, 2017, was conveyed through a Circular addressed to banks and OFIs in Nigeria, prohibiting the use of virtual currencies like Bitcoin, Dogecoin, Ripples, Litecoin, etc., as legal tender in the country.

The second release, in a letter dated February 5, 2021, addressed to all Deposit Money Banks, Non-Bank Financial Institutions, and OFIs, reiterated this prohibition and barred banks and OFIs from engaging in and facilitating payments for crypto exchanges. Consequently, crypto bank accounts were closed, prompting crypto users to seek alternative transaction methods.

Under the Guidelines issued by the CBN, while crypto banking transactions are now permitted, banks and OFIs are still prohibited from holding, trading, and/or transacting in virtual currencies on their own account. The Guidelines define Financial Institutions (“FIs”) as banks and OFIs. Some key highlights of the Guidelines include the following:

1. **Definition of Virtual and Digital Assets:** According to the Guidelines, a virtual asset is defined as a digital representation of value that can be transferred, digitally traded, and used for payment or investment purposes. The Guidelines however specify that virtual assets do not include digital representations of fiat currencies, securities and other financial assets covered elsewhere in the Financial Action Task Force (FATF) recommendations.

Regarding digital assets, the Guidelines define them as digital tokens representing assets such as a debt or equity claim on the issuer.

2. **Permissible Activities:** Under the Guidelines, banks and OFIs are permitted to undertake the following activities in their operations of accounts for VASPs:
 - i. Opening and operation of designated accounts;
 - ii. Acting as a settlement bank and providing accounts and services for VASPs;
 - iii. Acting as channels for foreign exchange flows and trade;
 - iv. Preparing and submitting monthly reports containing information on designated account to the CBN;
 - v. Establishing appropriate risk management systems for Anti-Money Laundering (AML), Combating the Financing of Terrorism (CFT) and Countering Proliferation Financing (CPF);
 - vi. Monitoring and reporting of suspicious transactions; and
 - vii. Any other activity that may be permitted by the CBN from time to time.
3. **Designated Account:** The Guidelines stipulate that any individual or entity intending to engage in the virtual/digital assets business must open an account specifically designated for that purpose, adhering to the requirements outlined in the Guidelines. Furthermore, the designated account can only be opened with the approval of senior management of the financial institution.

Furthermore, cash withdrawals are prohibited from this account. Therefore, withdrawals from the designated account are restricted to Manager's Cheques or transfers to another account.

If no transactions are conducted on the designated account for three consecutive months, the account will be declared dormant. In such cases, the account will be treated as unclaimed funds or abandoned property, following the provisions of Section 72 of the Banks and Other Financial Institutions Act (BOFIA) 2020.

A designated account shall undergo continuous verification of address and documentation by the Financial Institutions (FIs).

4. **Eligible Participants:** Under the Guidelines, the entities considered eligible stakeholders in the digital/virtual assets ecosystem include the following:
 - a. Commercial and Merchant banks;
 - b. Payment Service Providers (restricted to those involved in settlement for third parties);
 - c. All entities registered by the Securities and Exchange Commission (SEC) to conduct the business of digital/virtual assets services, which include:
 - i. Virtual Assets Service Providers.
 - ii. Digital Asset Custodians (DACs)
 - iii. Digital Asset Offering Platforms (DAOPs).
 - iv. Digital Asset Exchange (DAX).
 - v. DAX Operators.
 - vi. Any other entity that may be categorized by the CBN from time to time.

Summary of Obligations on VASPs/Digital Assets (DA) entities under the Guidelines

- I. **Requirements for Opening Designated Accounts:** The Guidelines require VASPs and DA entities to submit the following documents for the opening of designated accounts with banks:
 - a. Evidence of a valid licence issued by the Securities and Exchange Commission (SEC) for the entity to engage in the business of VASP/DAX/DAOP;
 - b. Certified true copy of the memorandum and articles of association, Form CAC2 -Statement of share capital and return of allotment of shares, Form CAC 2.1- Particulars of secretary, Form CAC 3 – Notice of registered address and Form CAC 7- Particulars of Directors.
 - c. Verifiable registered address of the company.
 - d. Copy of Certificate of Capital Importation (CCI) (where applicable);
 - e. Valid means of identification for all directors, principal officers, and beneficial owners of the company.
 - f. Bank Verification Numbers (BVNs) for all directors, principal officers, and beneficial owners of the company.

- g. Home addresses of all directors, principal offices, and beneficial owners of the company.
- h. Anti-Money Laundering (AML), Combating Financing of Terrorism (CFT) and Countering Proliferation Financing (CPF) Policies of the entity.
- i. All other requirements for a corporate account in accordance with the CBN Customer Due Diligence Regulations, 2023; and
- j. Any other requirements that the CBN may impose from time to time.

II. **Provisions on Designated Settlement Accounts**

The Guidelines require all VASPs/DA entities platforms to maintain designated settlement accounts in banks for settling their obligations arising from transactions within the ecosystem will be settled. These designated settlement accounts shall hold all Naira positions of individuals with the VASPs/DAs. The Guidelines also mandate VASPs/DA entities to ensure that transaction details on their platforms leading to settlement in the designated settlement account are accessible online in real-time to the FIs. Additionally, designated settlement accounts are not to facilitate FX positions of individuals on the VASP/DAs platform.

The Guidelines mandate that transactions on the VASP/DA platforms shall only be in Naira. Furthermore, VASP/DA entities are required to maintain a minimum collateral equal to 150% of the highest net debit position into the designated settlement account over the past ten (10) days. Additionally, returns on transactions conducted on the designated settlement accounts should be rendered to the bank monthly or at a frequency as required by the banks.

- III. **Restriction on the use of designated accounts:** The Guidelines restrict the use of designated accounts for purposes other than transactions on virtual/digital assets and only permit their use by VASPs/DA entities for such transactions.

Summary of Obligations on FIs under the Guidelines

- i. **Returns to CBN on the activities of VASPs:** Under the Guidelines, FIs are obligated to continuously monitor all activities conducted in designated accounts opened in accordance with the Guidelines.

FIs shall, at the end of every month and not later than the 10th of the following month, submit to the relevant supervisory department of the CBN, data and other information on designated accounts. The content of the returns shall include, but not limited to: (a) the number of designated accounts opened within the reporting period; (b) the value and volume of transactions conducted in each account within the reporting period; (c) the details of the counter party(ies) to the transactions; (d) incidents of fraud or theft; and (e) the number of customer complaints and remedial measures taken.

- ii. **Operational and transactional limits:** FIs must set transaction limits for each designated account opened in line with these Guidelines, based on their risk assessment criteria. These limits should be sensible and proportional to the amount of cash handled by the account holder and the risks inherent in the account holder's business activities.
- iii. **Risk management for Anti-Money Laundering, Combating the Financing of Terrorism and Counter Proliferation Financing (AML, CFT, and CPF):** FIs are required to establish suitable risk management systems to ascertain whether a designated account opened under these Guidelines has been used, is being used, or is likely to be used for money laundering, terrorism financing and proliferation financing. Similarly, FIs must also take reasonable measures to identify the beneficial ownership, source of wealth and source of funds of the designated account under these Guidelines.
- iv. **Maintenance of records:** FIs must retain all transaction records of a designated account for at least five years after the transaction's completion or such longer period mandated by the CBN. This requirement applies irrespective of whether the account or business relationship is ongoing or terminated.

Additionally, FIs must conduct Customer Due Diligence (CDD), monitor transactions and report any suspicious activities, among other obligations.

- v. **Restriction on operations of designated accounts on concession:** FIs are prohibited from entering into any concession agreement or arrangement with a holder of a designated account. The Guidelines stipulate that the account must always adhere to the maximum transaction charges band outlined in the CBN Guide to Charges for Banks and Other Financial Institutions.
- vi. **Sanctions:** The CBN retains the authority to impose the following sanctions on an FI, its board of directors, officers or staff for non-compliance with any of the Guidelines:
 - i. Prohibition from opening any further designated accounts.
 - ii. Imposition of a monetary penalty, not less than the sum of N2,000,000.00 (Two Million Naira) against the FI, members of its board, senior management, and any staff, for any infraction.
 - iii. Suspension of the operating licence of an FI.

The Guidelines signal a shift towards the regulating cryptocurrency service providers in Nigeria. Consequently, these enterprises will be mandated to comply with explicit regulations set forth by Nigerian authorities, such as the SEC Rules on Issuance Offering and Custody of Digital Assets 2022. This represents a significant milestone in the regulatory framework.

GUIDELINES FOR THE REGULATION OF REPRESENTATIVE OFFICES OF FOREIGN BANKS IN NIGERIA

The CBN, aiming to streamline the understanding of regulatory obligations for representative offices of foreign banks in Nigeria, released the Guidelines for the Regulation of Representative Offices of Foreign Banks in Nigeria in May 2023 (the “Guidelines”).

The Guidelines complement sections 6(1), and 8(1) of BOFIA, which mandate prior approval from the CBN for the operation of such offices. The Guidelines encompass provisions detailing the scope, applicability, permissible activities, licensing procedures, governance, reporting and operational requirements for representative offices. It is mandated that representative offices operating in Nigeria adhere to these requirements within 180 days from the date of release.

The Guidelines define an approved Representative Office of a Foreign Bank in Nigeria (ROFBN or Approved Offices) as a liaison office of a foreign bank licensed by the CBN. Its primary purpose is to promote the products and services of its foreign parent entity and act as a link between the foreign parent and local banks, financial institutions, private companies, and the general public.

These Guidelines are applicable to licensed foreign banks headquartered outside Nigeria, licensed foreign financial institutions engaged in deposit-taking, lending, and provision of accounts, and foreign-owned operating bank or financial holding companies abroad. These entities must hold a controlling interest in one or more banks or institutions primarily involved in deposit-taking, lending, and provision of accounts.

1. **Licensing Requirements:** Foreign banks and other financial institutions intending to establish Approved Offices must undergo a two-step approval process by the CBN, starting with the approval-in-principle (AIP) and concluding with final approval. To obtain the AIP, applicants must formally submit an application to the Governor of the CBN, along with required documentation. This documentation includes a no-objection letter from the applicant’s home supervisory authority, indicating consent for the office’s establishment, of a board resolution supporting the foreign parent’s decision to invest in the proposed office’s equity shares, evidence of payment of a non-refundable application fee of N5,000,000.00 (Five Million Naira) to the CBN, amongst other necessary documents.

To secure the CBN's final approval, the applicant must submit an application for the grant of a final license to the CBN no later than three (3) months after obtaining the AIP. This application must be accompanied by several documents, including: (i) evidence of payment of a non-refundable licensing fee of N10,000,000.00 (Ten Million Naira) to the CBN, (ii) certified true copies (CTCs) of the applicant's certificate of incorporation and Memorandum and Article of Association, (iii) Form CAC 1.1 (Application for Registration of Company), (iv) evidence of the proposed office location for business operations, (v) details such as names, addresses, BVNs, means of identification, and curriculum vitae of management staff, a schedule of changes in the Board and shareholding (if any) after the grant of AIP, and copies of letters of offer and acceptance regarding the management team.

2. **Reporting and Operational Requirements:** The Guidelines outline several reporting obligations for approved ROFBNs, necessitating the submission of various information and documents to the Director of the Banking Supervision Department at the CBN. These include: (i) Yearly Certificate: a yearly certificate from a recognized audit firm by February 28th each year, confirming the recorded revenue or providing evidence of no income earned or accrued to the Nigerian office; (ii) Compliance Confirmation: written confirmation from the Head of the ROFBN, affirming compliance with all approval document requirements; (iii) Quarterly Report: Submission of a quarterly report within 14 days of each quarter-end, summarizing the office's activities. This report should include details on credit facilities granted by its parent or related parties to Nigerian borrowers, amongst other relevant information

The Guidelines also outline operational requirements for Approved Offices, including:

- I. Prior approval for prospective employees: Approved offices must obtain the CBN's prior approval for their prospective employees.
- II. Relocation or closure: Any relocation or closure of Approved Offices requires prior approval from the CBN.
- III. Notification of changes: Approved Offices must notify the CBN of any change in arrangements for the foreign bank's oversight of its operations, as well as any variation in shareholding structure that changes control or majority ownership of the parent foreign institution.
- IV. Qualification for Head of Office: The Head of the Approved Office must meet a minimum qualification level, not below the grade of an Assistant General Manager.

These Guidelines represent a positive step towards regulating representative offices of foreign banks in Nigeria. To deter unlicensed operations, the CBN has also instituted regulatory sanctions, including the suspension or revocation of banking licences. It is therefore essential for representative offices in Nigeria to comply with these Guidelines and seek appropriate legal advice to ensure adherence.

PAN AFRICAN PAYMENTS AND SETTLEMENT SYSTEM (PAPSS)

On the 11th of October 2021, the CBN issued the Guidelines on the Operations of Pan African Payments and Settlement System (PAPSS) in Nigeria (“PAPSS Guidelines”) outlining the operational framework of PAPSS in the country. Approximately two years later, on July 25, 2023, the CBN issued a circular to authorized dealers, aiming to offer further clarity on the PAPSS Guidelines and for settlement of PAPSS transactions using CBN foreign exchange (the “Circular”). This Circular was issued in response to the initial PAPSS Guidelines presented on October 11, 2021.

- 1. Meaning and Operation of PAPSS in Nigeria:** According to the PAPSS Guidelines, PAPSS is identified as a market system launched by the African Export-Import Bank (AFREXIM) in collaboration with the West African Monetary Institute (WAMI). Its main objective is to facilitate cross-border retail payments, enabling transactions in the local currency of the sending country and the receipt of funds in the local currency of the beneficiary's country within the West African Monetary Zone (WAMZ). It is noteworthy that inter-bank settlement under PAPSS will be conducted in USD (United States Dollars).
- 2. Additional Provisions under the Circular**
 - PAPSS transactions must remain trade-backed, and eligible payment modes are Bills of Collection;
 - The customer limit is set at US\$20,000 per quarter, while the limit per Authorised Dealer Bank (ADB) is US\$200,000 per quarter;
 - The Circular prohibits multiple applications through ADBs;
 - In relation to the settlement of PAPSS transactions by CBN, Authorised Dealers must obtain CBN's approval for USD cover before initiating payments on PAPSS. ADBs are also allowed to maintain a USD designated account with the PAPSS settlement bank to settle PAPSS transactions, for which the CBN would not provide foreign exchange.

The Circular clarifies the eligible payment modes and transaction limits for customers and dealers, aiming to facilitate the efficient use of PAPSS for intra-African trade transactions.

GUIDELINES FOR CONTACTLESS PAYMENTS IN NIGERIA

On June 27, June 2023, the CBN issued the Guidelines for Contactless Payments in Nigeria (“the Guidelines”) to ensure that participants in contactless payments implement appropriate risk management processes and measures while adhering to relevant standards.

Contactless technology facilitates an alternative payment method wherein payments are used without physical contact with devices, such as prepaid debit and credit cards, tokens, and mobile electronic devices.

The Guidelines apply to various entities involved in the contactless payments ecosystem, including Acquirers, Payment Schemes, Card Schemes, Switching Companies, Terminals, Merchants, Issuers, Payment Terminal Service Providers (PTSPs), Payment Terminal Service Aggregator (PTSA), Terminal Owners, and Customers. They outline the roles and responsibilities of these stakeholders in the contactless payments process.

1. **Minimum Standards:** All stakeholders responsible for storing customer information must ensure that their terminals, applications, and processing systems comply with international security standards for contactless payments.

Additionally, stakeholders are required to adhere to all relevant CBN Guidelines/Circulars and obtain approval from the CBN for contactless payment products.

2. **Transaction Limit:** The CBN has the authority to establish transaction limits for contactless payments, and stakeholders are permitted to set limits within the parameters defined by the CBN. Transactions below the stipulated limits may not necessitate customer authorization, such as Personal Identification Number (PIN) or token authentication. However, transactions surpassing the limit require verification or authentication (for higher-value contactless payments).

Stakeholders are mandated to adopt a risk-based approach in setting transaction limits, with the level of risk contingent upon the due diligence conducted on the customer during the onboarding process.

3. **Dispute Resolution:** Disputes are to be resolved using the existing payments industry dispute resolution mechanism system. According to the risk and information security management framework, each scheme is required to establish its dispute resolution mechanisms. Disputes may be referred through the Director of the Payments System Management Department of the CBN to the PICC for resolution.
4. **Reporting Requirements and Sanctions:** Participants are required to submit periodic returns on contactless payment transactions and report incidences of fraud, breaches, and other security events to the CBN. It is mandatory for stakeholders to adhere to the Guidelines and other regulations of the CBN. Non-compliance may result in sanctions and the payment of penalties as determined by the CBN.

FULL APPLICATION OF PENALTIES FOR FAILURE TO FILE ANNUAL RETURNS BY COMPANIES AND RECOVERY OF PENALTIES AGAINST COMPANY DIRECTORS AND OFFICERS

On November 2nd, 2023, the Corporate Affairs Commission (CAC) issued the aforementioned Circular, informing companies of the compulsory requirement to file their annual returns at the end of each fiscal year. The Circular also outlined the intended imposition of penalties on directors and officers of companies that fail to comply with this directive. The issuance of the Circular was prompted by the widespread non-compliance of companies with the statutory obligation to submit annual returns.

Initially, the Commission had planned to commence implementation on January 1st, 2024, but with this new Circular, the timeframe has been extended to April 1st, 2024. In accordance with the Companies Regulations and the Official Schedule of Fees, the penalties imposed on directors and officers of a company are calculated as daily penalties, representing a more stringent form of penalty compared to the previous flat fee of N5,000.00 (Five Thousand Naira) for each year of default by the company. Additionally, the Commission has indicated that directors and officers of struck-off and wound-up companies would be required to settle any outstanding penalties imposed on them.

Companies are strongly advised to ensure that their annual returns are filed and up-to-date before the implementation deadline of April 1, 2024, in order to avoid penalties.

PIONEER STATUS INCENTIVE (PSI): LEVERAGING ON PSI AS A CATALYST TO BOOST FOREIGN INVESTMENT IN NIGERIA

On December 30, 2023, the Nigerian Investment Promotion Commission (NIPC) announced a three-year tax exemption for 34 companies in Nigeria, aiming to stimulate investment and foster economic growth. This initiative by the commission is commendable as it seeks to incentivize investors and bolster investment in the country, thereby driving the nation's economy on an upward trajectory. Despite concerns about the perceived abundance of tax waivers and concessions granted by the Nigerian government, this move demonstrates a commitment to attracting investment.

Undoubtedly, implementing policies that attract investment is crucial for enhancing the country's overall revenue. Tax incentives are particularly effective in this regard, as they encourage investors to establish a presence in Nigeria, ultimately benefitting the nation through corporate taxes in the long term. For instance, in 2021, it was reported that MTN, a leading telecommunications company, contributed 13.5% of the total tax revenue received by the Federal Inland Revenue Service. This highlights the significant impact corporate taxes can have on bolstering a country's financial inflows.

As the nation seeks alternative avenues for revenue generation, prioritizing the attraction of foreign investment remains crucial. One strategy to consider is the implementation of new tax incentives and ensuring that existing incentives are easily accessible to prospective investors. An example of such incentives is the Pioneer Status Incentive (PSI), managed by the Nigeria Import Promotion Council (NIPC).

Established by the Industrial Development (Income Tax Relief) Act, No. 22 of 1971, the Pioneer Status Incentive offers a tax holiday to qualifying industries and products, providing relief from corporate income tax for an initial period of three years, with the possibility of extension for one or two additional years. In 2017, the NIPC released the Application Guidelines for the Pioneer Status Incentives to assist investors in navigating the application process.

In essence, the PSI grants a three-year tax exemption to eligible companies. To qualify for the Pioneer Status Incentive, a company must be in its first year of production or service and possess non-current tangible assets exceeding N100,000,000.00 (One Hundred Million Naira). Additionally, the company must be engaged in activities classified as pioneer industries or products and demonstrate tangible contributions and impact within its sector.

One notable challenge for investors interested in accessing the pioneer status incentive is the arduous application process. A review of the guidelines reveals the multiple stages and extensive documentation required from applicant companies before being considered for pioneer status. While these measures aim to ensure that only deserving companies benefit from the incentive, investors perceive them as overly stringent.

It is imperative for the NIPC to strike a balance between thorough scrutiny and facilitating ease of access to this incentive to fulfill its primary objective of attracting investments.

IMPLEMENTATION OF N100,000,000.00 (ONE HUNDRED MILLION SHARE CAPITAL) MINIMUM SHARE CAPITAL FOR COMPANIES WITH FOREIGN PARTICIPATION

In 2023, the Federal Ministry of Interior initiated the enforcement of the N100,000,000.00 (One Hundred Million) minimum share capital requirement outlined in the Federal Ministry of Interior Handbook on Expatriate Quota (Revised Guideline, 2022) for companies with foreign involvement. This implementation represents a substantial increase from the previous minimum share capital requirement of N10,000,000.00 to the new minimum of N100,000,000.00 for foreign companies. The allotted shares must be fully paid up, and evidence of payment inflow for the shares by the foreign partner must be furnished in support of the business permit application.

JUDICIAL DECISIONS

BRITISH AMERICAN TOBACCO NIGERIA LIMITED AND AFFILIATED COMPANIES V THE FEDERAL COMPETITION AND CONSUMER PROTECTION COMMISSION

On August 28, 2020, the Federal Competition & Consumer Protection Commission (the Commission) initiated an investigation into British American Tobacco Nigeria Limited and its affiliated companies, British American Tobacco Plc, and British American Tobacco (Holdings) Limited. This investigation was launched pursuant to sections 17 (a), (e), (g),(h), (l),(t), x, (y), 27, 28, 33, 108, 110, 123, 131 of the Federal Competition and Consumer Protection Act, 2018.

The investigation was prompted by certain behaviours deemed anti-competitive and abusive market dominance, as well as various infringements of the Federal Competition and Consumer Protection Commission Act and National Tobacco Control Act by British American Tobacco Nigeria Limited and its affiliates. To carry out its regulatory and investigative functions, the Commission sought authorization from the Federal High Court. The Court issued an Order and Warrant of Search and Seizure, which the Commission executed.

Based on an agreement reached between the parties after British American Tobacco Nigeria Limited (BAT) approached the Commission for settlement under Rule 4.1 and 5 of the Federal Competition and Consumer Protection Commission Investigative Cooperation/Assistance Rules & Procedures 2021, which allow for reduced monetary penalties and prosecutorial discretion respectively, the Commission has now closed the investigation. This closure follows the execution of a mutual Consent Order between the parties, stipulating that British American Tobacco Nigeria Limited and its affiliated companies shall:

- i. Pay a penalty of \$110,000,000.00 (One Hundred and Ten Million Dollars) pursuant to section 155 of the Federal Competition & Consumer Protection Act, which states that any person who contravenes any consumer right commits an offence under this Act. In the case of a natural person, they are liable upon conviction, to imprisonment for a term not exceeding five (5) years or to a fine not exceeding N10,000,000.00 or to both fine and imprisonment. In the case of a body corporate, they are liable, upon conviction, to a fine of not less than N100,000,000.00 or 10% of their turnover in the preceding business year, whichever is higher. Additionally, each director of the body corporate is liable to be proceeded against and dealt with.

- ii. Be subject to compliance monitoring under the supervision of the Commission for a period of twenty-four (24) months to ensure appropriate modification of behavioural and business practices in accordance with prevailing competition laws and regulations.
- iii. There will be mandatory public health and tobacco control advocacy conducted in a manner compliant with tobacco control legislation and regulations and deemed satisfactory to the Commission as mitigation for evidence of a pattern of undermining and circumventing national tobacco control policies and regulations.
- iv. Provide written assurances to the Commission pursuant to section 153 of the Act, which empowers the Commission to use its best endeavours to obtain a satisfactory written assurance.

Upon British American Tobacco Nigeria Limited and its affiliated entities satisfactorily meeting their obligations as outlined within the Consent Order, the Commission withdrew the criminal charges against British American Tobacco Nigeria Limited and its affiliates.

THE AFFIRMATION OF THE JURISDICTION OF THE INVESTMENT AND SECURITIES TRIBUNAL (IST) OVER CAPITAL MARKET DISPUTES IN SUIT NO - SC/314/2007: MUFUTAU AJAYI V SECURITIES AND EXCHANGE COMMISSION

On January 13, 2023, the Supreme Court of Nigeria delivered a pivotal judgment with significant implications for the resolution of capital market disputes. This landmark ruling emerged from the case of **Mufutau Ajayi v. Securities and Exchange Commission ("SEC")**, which had been pending before the Apex Court for 15 years.

Background Facts of the Case

In the year 2000, the National Council on Privatization facilitated the sale of 86,400,000 ordinary shares of AP Plc on behalf of the Federal Government. Following this, in April 2001, a core investor of AP Plc alleged during a press conference that the company's previous management had not disclosed debts amounting to N22.5 billion owed to various creditors. Additionally, it accused AP Plc's auditors of negligence in their auditing duties.

The SEC launched an investigation into these allegations by establishing an Administrative Proceeding Committee ("APC" or "Committee") to probe the matter. The Committee confirmed that the disclosed sum of N10,181,606 billion in AP Plc's prospectus was substantially lower than the actual debt as of June 30, 1999.

Mufutau Ajayi, despite not holding a directorial position at African Petroleum Plc, served as the Finance and Accounts Manager within the company. The SEC's Committee found Mufutau Ajayi responsible for authorizing the issuance of a prospectus dated March 30, 2000, which contained false information regarding the company's indebtedness. Specifically, it stated that the total indebtedness of the company as of June 30, 1999 was N10.2 billion, whereas subsequent revelations revealed otherwise.

This action was deemed to contravene the provisions of sections 62 (1), (2)(d), and 63 of the ISA 1999.

Despite being invited, Mr. Ajayi failed to attend the Committee's investigative hearing. The Committee's findings against Mr. Ajayi included the following:

- a. although Mr. Ajayi was not a Director of the company, he was a principal officer who played a major role in obtaining the Commercial Papers (CPs) and Bankers' Acceptances (BAs) that led to the concealed debt;
- b. his conduct prior to the offer for sale, by denying the auditors access to relevant financial records during the auditing exercise, is deemed very reprehensible and highly unprofessional;
- c. his role bordered on economic and financial crime;
- d. there was enough evidence to refer his matter to the Economic and Financial Crimes Commission (EFCC).

As a result of the aforementioned findings, the APC directed the following actions:

- (a) Strongly reprimand Mr. Ajayi for his role in the debt concealment;
- (b) Disqualify Mr. Ajayi from employment or participation, in any capacity, in the securities industry;
- (c) Refer Mr. M. C. Ajayi to the Economic and Financial Crimes Commission (EFCC) for further criminal investigation and action; and
- (d) Inform the Institute of Chartered Accountants of Nigeria (ICAN) and all professional bodies to which Mr. Ajayi belongs about his actions and the Decision.

Legal Proceedings at the Court

Mr. Ajayi, upon receiving notification of the SEC's decision via a letter dated April 19, 2004, contested the SEC's decision at the Federal High Court in Suit No. FHC/ABJ/CS/285/2004 – Mufutau Ajayi v. SEC & Anor. The SEC, represented by its counsel, objected to the jurisdiction of the Federal High Court to hear and determine the case. The Court upheld the objection, ruling that the proper venue for the Plaintiff to address the matter was the Investments and Securities Tribunal, not the Federal High Court.

Dissatisfied with the decision of the Federal High Court, Mr. Ajayi appealed to the Court of Appeal in Appeal No. CA/A/200/M/2005 – Mufutau Ajayi v. SEC. The Court of Appeal affirmed the ruling of the Federal High Court in its judgment delivered on May 8, 2007. Mr. Ajayi, now the Appellant, further pursued the matter by filing a Notice of Appeal to the Supreme Court on August 2, 2007.

Supreme Court Decision

The Supreme Court delivered its judgement on January 13, 2023. After meticulously examining the facts and the history of the case, as well as reviewing the arguments submitted by both parties' counsel, the apex court concluded that the SEC had taken adequate and sufficient measures to inform the Appellant about the sittings and proceedings of the APC. Furthermore, the Court found that the SEC did not act as a judge in its own cause, as it had acted upon a complaint filed by Sadiq Petroleum Nigeria Limited (SPNL), a core investor that subscribed to 30% of the shares of African Petroleum Plc.

Accordingly, the Supreme Court noted that the Appellant could not continue to pursue the granting of the order of certiorari when it was evident that the conditions necessary for its issuance were not met.

Furthermore, and of great importance, was the decision of the apex court on the issue of jurisdiction concerning capital market matters. The Supreme Court held that the central issue in the appeal was the Federal High Court's refusal to exercise jurisdiction over the matter, a decision upheld by the Court of Appeal. After reviewing the relevant laws governing the actions of the SEC and its APC, the Supreme Court posed a simple question: "Where, then, is the Appellant supposed to go if aggrieved with the decision of the APC?" This question was addressed by the Court in the following manner:

"Based on the foregoing, it implies that any grievance, whether on denial of fair hearing by the APC as in the present case, rule of law, equity, facts or law, etc., should be instituted in the Investment and Securities Tribunal (IST). It is unequivocal that the proper forum with jurisdiction to hear and determine the case of the Appellant is the Tribunal and not the Federal High Court."

Indeed, the Supreme Court's decision effectively resolves the longstanding debate over jurisdiction in capital market disputes. Consequently, the Investments and Securities Tribunal (IST) retains exclusive jurisdiction to adjudicate all matters outlined in Section 284 of the Investments and Securities Act, 2007 ("Act"). This authority cannot be usurped by any other judicial body. Notably, this jurisdiction encompasses decisions or determinations made by the SEC within the framework of the Act. This definitive ruling solidifies the IST's pivotal role in ensuring the fair and effective resolution of capital market disputes under Nigerian law.

CA/PEPC/05/2023 – ABUBAKAR ATIKU & ANOR V. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS.

The case centers on the presidential election conducted by the Independent National Electoral Commission (INEC) on February 25, 2023. The first Appellant, a presidential aspirant, participated in the election, wherein the second Respondent being declared the winner. The Subsequently, the Appellants filed Petition No. CA/PEPC/05/2023 contesting the conduct and results of the election at the Presidential Election Petition Court (PEPC).

In their petition, the first Appellant alleged several irregularities, including manipulation of the Bimodal Voters Accreditation System (BVAS), failure by the second Respondent to secure the required percentage of votes in the Federal Capital Territory (FCT), and claimed that the second Respondent was ineligible due to forged academic certificates.

The PEPC dismissed the Petition due to lack of substantiated evidence. Dissatisfied, the Appellants appealed to the Supreme Court, raising the issue of whether the second Respondent was duly elected by the majority of votes and seeking to introduce fresh evidence, notably records from Chicago State University (CSU) regarding second Respondent.

The Supreme Court, however, rejected the application to submit fresh evidence, citing the immutability of the timeframe set by section 285(6) of the Constitution for hearing election petitions. Regarding the eligibility of the second Respondent, the Supreme Court clarified that section 134(2)(b) of the Constitution does not require a candidate to secure a specific percentage of votes in the FCT. Instead, the FCT is treated like any other state in Nigeria, and the requirement pertains to obtaining a percentage of votes from two-thirds of all states.

Ultimately, the Supreme Court dismissed the appeal and upheld INEC's declaration of Bola Ahmed Tinubu as president. This decision clarifies that the FCT does not hold special status in presidential elections, aligning with its treatment as any other state in Nigeria under section 299 of the Constitution.

FEDERAL REPUBLIC OF NIGERIA (FRN) V. PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED (P&ID) [2023] EWHC 2638.

On January 11, 2010, the Federal Government of Nigeria (FGN) and Process & Industrial Developments Limited (P&ID) signed a Gas Supply and Processing Agreement for Accelerated Gas Development (GASPA), intended to last for 20 years. However, P&ID failed to construct Gas Processing Facilities (GPFs), and Nigeria did not provide wet gas to the facilities. Disputes arose, leading to arbitration initiated by P&ID on August 22, 2012.

The Arbitral Tribunal, in a split decision on July 17, 2015, and a supplementary award on January 31, 2017, found Nigeria in repudiatory breach, terminated the contract, and ordered Nigeria to pay P&ID damages of \$6.6 billion at 7% interest.

P&ID sought enforcement of the Final Award in the English Commercial Court on March 16, 2018, which was confirmed by Butcher J. on August 16, 2019. However, Nigeria applied to set aside the Award on December 5, 2019, alleging fraud and jurisdictional issues.

Decision: Nigeria based its application on Section 68 of the Arbitration Act 1996, which the Court scrutinized extensively. Alleging serious irregularity against P&ID, the Court

found evidence of corrupt payments made to Mrs. Grace Taiga, then Legal Director at the Ministry of Petroleum Resources, aiming to influence her in favor of P&ID regarding the Gas Supply and Processing Agreement (GSPA) with Nigeria. P&ID also presented false materials to the Arbitral Tribunal and continued bribing Mrs. Taiga during the arbitration to conceal the initial bribery.

Moreover, P&ID retained Nigeria's internal documents received during arbitration, intending to monitor Nigeria's awareness of the deception. The Court determined that this irregularity substantially disadvantaged Nigeria, as disclosure of the bribery would have significantly altered the arbitration's outcome, possibly rendering the GSPA voidable due to fraud.

Regarding objections raised post-arbitration, the Court referred to Section 73 of the Act, which stipulates that a party forfeits the right to object if they participated in arbitration without raising the objection, unless they can show that they could not have known about it at the time. Nigeria's lack of awareness of the bribery until Mrs. Taiga's 2019 statement to the EFCC, and their knowledge of P&ID's possession of internal documents in 2021, justified their objections post-arbitration.

Consequently, the Court concluded that Nigeria did not forfeit its right to object under Section 68(2)(g) of the Act, affirming that the Awards were procured through fraud and contrary to public policy, and therefore unenforceable.

CA/PEPC/03/2023 – MR. PETER GREGORY OBI & ANOR V. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS.

The first Appellant contested the presidential election held by the Independent National Electoral Commission (INEC) on 25th February 2023. Following the election, the second Respondent was declared the winner. Dissatisfied with the outcome, the Appellants initiated Petition No. CA/PEPC/03/2023 at the Presidential Election Petition Tribunal/Court (PEPC) challenging the conduct and outcome of the election. The main contentions of the first Appellant included the second Respondent's lack of qualification to contest due to his running mate's prior nomination as a senatorial candidate and a fine for dishonesty, electoral malpractices, such as overvoting and improper utilization of the Bimodal Voters Accreditation System, and the second Respondent's failure to obtain one quarter of the votes cast in the Federal Capital Territory (FCT).

Decision: The PEPC dismissed the petition, leading the Appellants to appeal to the Supreme Court. The Supreme Court also dismissed the petition, citing the Appellants' failure to substantiate their claims of irregularities with sufficient evidence. The Court noted a lack of specific details of electoral irregularities in the petition, as required by the Electoral Act 2022.

Additionally, the Supreme Court settled the debate over the status of the FCT, ruling that it should be treated as any other State in Nigeria. In interpreting section 134(2) of

the Constitution, the Court stated that a candidate is not required to secure 25% of the total votes cast in the FCT. Instead, securing 25% of votes cast in any two-thirds of the States, with the FCT being one of them, is sufficient for a candidate to be declared the winner of a presidential election in Nigeria.

Furthermore, the Supreme Court upheld the PEPC's decision to strike out the witness statements of the first Appellant's subpoenaed witnesses due to non-compliance with the prescribed timeline for filing of witness statements as stipulated in the Electoral Act. The Court stressed the importance of strict compliance with the provisions of the Electoral Act.

ZEB EJIRO V. ANNE CHIOMA NJEMANZE (DOMITILLA'S CASE): A NEW DAWN FOR TRADE MARKS OPPOSITIONS

News spread rapidly about the copyright dispute involving Anne Chioma Njemanze, the lead actress in the movie and its sequel, "Domitilla" and "Domitilla 2" released in 1996 and 1999 respectively. The movies were directed and produced by the renowned filmmaker, Zeb Ejiro, who was the Defendant in the copyright suit. Ms. Njemanze aimed to halt Zeb Ejiro, FilmOne Entertainment and Dioni Vision companies from proceeding with their intention to create another sequel titled "Domitilla: The Reboot."

It emerged that in September 2020, Ms. Njemanze had registered the name "Domitilla" (the name of the main character she portrayed) under her name, around the time when Zeb Ejiro expressed interest in involving her in the "Reboot". Consequently, she sought to restrain the Defendants, including Zeb Ejiro, from using the name for the new sequel. In an unprecedented move, Zeb Ejiro proceeded to file a petition against the trademark registration of "Domitilla" in Ms. Njemanze's name. Mr. Ejiro's legal team urged the Registrar of Trademarks to cancel, revoke and expunge Ms. Njemanze's trademark registration, arguing that she was not the true proprietor of the "Domitilla" trademark. They alleged that the registration was made in bad faith and could cause confusion. They requested the Registrar of Trademarks to cancel the registration, citing a violation of the Trademarks Act.

The Registrar of Trademarks concurred with the arguments presented by Zeb Ejiro's legal team and rejected the trademark registration. He observed that Ms. Njemanze's sole connection to the "Domitilla" trademark stemmed from her portrayal of the character in the "Domitilla" movies, which were owned by Zeb Ejiro. He therefore concluded that Ms. Njemanze was not the rightful owner of the "Domitilla" trademark rights. This decision appears to establish a new precedent or avenue for third parties to oppose trademark registrations. Previously, parties seeking to oppose a trademark in Nigeria typically pursued one of the following avenues:

- I. Lodge an opposition against the trademark application within the statutory two-month period after it has been published in the Trademarks Journal, which is periodically issued for public perusal; or

II. Initiate a cancellation action based on the grounds of non-use of the trademark, in accordance with the provisions of the Trademarks Act.

In this case, which was initiated through a petition, the Registrar of Trademarks, relying on Sections 18(7) and Section 22 of the Trademarks Act, affirmed that it had the authority to rectify any error in a trademark application at any point, whether before or after the acceptance of the application for registration. This authority extends to trademark applications even after certificates of registration have been issued.

It is hoped that brand owners will capitalize on this new avenue to safeguard their trademarks against bad faith users at the Trademarks Registry. We will continue to monitor the situation as it progresses.



CONTRIBUTORS



Richmond Idaeho
Senior Associate



Ifeanyi Okonkwo
Senior Associate



Mariam Akinyemi
Senior Associate



Donald Attah
Associate



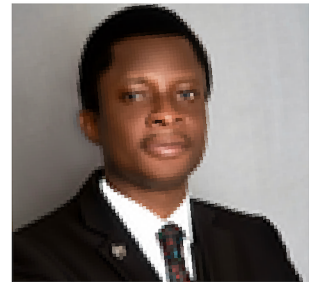
Chidozie Obidigwe
Associate



Motunrayo Ajayi
Associate



John Nsorom
Associate



Chukwukelo Ileka
Associate



Mercy Matthew
Associate



Emediong Essien
Associate



Amarachi Eze-Njoku
Associate

Key Contacts

For further information, kindly reach the key contacts below:



FOLASADE OLUSANYA

Co-Managing Partner

+234 803 610 2040

E: fola.olusanya@jee.africa



TAIWO ADESHINA

Partner, Corporate Commercial
Department.

+234 803 717 6741

E: taiwo.adeshina@jee.africa

Victoria Island

RCO Court,
3-5 Sinari Daranijo Street,
Victoria Island,
Lagos, Nigeria
island.

Tel

+234 (02) 014626841/3,
+234-(02) 012806989

Email

jee@jee.africa

Abuja

42, Moses Majekodunmi Crescent,
Utako, FCT, Abuja

Ikeja

1st floor, ereke house,
Plot 15, CIPM Avenue
CBD Alausa Ikeja
Lagos Nigeria

Accra

3 Emmause, 2nd Close
Akosombo House
Labone, Accra, Ghana
P.O. Box 14951
Accra, Ghana

Yaoundé

3rd Floor, Viccui Building
Apt. 15-16, Carr Street
New Town, Yaoundé
Cameroon

Harare

38 Clairwood Road,
Alexandra Park,
Harare,
Zimbabwe.