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Doing Business In...

Nigeria

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NIGERIA

Law and Practice

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1. Legal System

1.1 Legal System and Judicial Order

Nigeria operates a mixed legal system which is sourced from the received English law, common law, customary law and Shari'a.

The judicial system is hierarchical in nature and divided between federal and state jurisdictions. The judicial order is also divided between original and appellate jurisdictions with the Supreme Court being the highest court.

Additionally, there are some specialised courts and tribunals that are established by statute for dealing with special matters. For example, the National Industrial Court deals with employment disputes, the Investment and Securities Tribunal deals with capital markets related issues, and the Tax Appeal Tribunal deals with tax issues. These specialised courts/tribunals have original jurisdiction over the matters assigned to them by law, while appeals from the courts/tribunals will follow the hierarchical order provided in the law that set them up.

2. Restrictions to Foreign Investments

2.1 Approval of Foreign Investments

Nigeria operates an open economy and encourages the inflow of foreign investment by way of foreign direct investment (FDI) and foreign portfolio investment (FPI). Foreigners interested in FDI are required to take up shares in an existing company or register a business with a minimum share capital of NGN10 million. A company with foreign participation is also required to obtain a business registration certificate and business permit from the Nigerian Investment Promotion Commission (NIPC) and the Federal Ministry of Interior, respectively.

Negative List

Although the Nigerian economy is open to foreign investment, foreigners are restricted from investing in the items on the negative list. These are:

- the production of arms, ammunition, etc;
- the production of, and dealing in, narcotic drugs and psychotropic substances;
- the production of military and para-military clothing and accoutrement, including those of the police and the customs, immigration and prison services; and
- such other items as the Federal Executive Council may, from time to time, determine.

Sector-Specific Restrictions

Additionally, there are some Nigerian laws that restrict and limit the capacity of foreigners to invest in some sectors in Nigeria. These apply to the following sectors:

- Oil and gas – to be competitive in the award of contracts, at least 51% of the shares of a company must be owned by Nigerians.
- Coastal trading – the Coastal and Inland Shipping (Cabotage) Act restricts the use of foreign-owned or manned vessels for coastal trade in Nigeria.
- Broadcasting – a company applying for a broadcasting licence must demonstrate that it is not representing any foreign interests and that it is substantially owned and operated by Nigerians.
- Advertising – only a national agency (that is, an agency in which Nigerians own not less than 74.9% of the equity) can advertise to the Nigerian market.
- Private security – a foreign investor cannot acquire an equity interest in, or sit on the board of, a Nigerian private security company.
- Engineering services – a company engaged in engineering services must be registered with the Council for the Regulation of Engineering in Nigeria (COREN); one requirement for registration is that the company must have Nigerian directors registered with the COREN holding at least 55% of the company's shares.
- Aviation – to qualify for the grant of an aviation licence or permit, the Nigerian Civil Aviation Authority must be satisfied that an applicant is a Nigerian company or citizen.

2.2 Procedure and Sanctions in the Event of Non-compliance

Generally, obtaining approvals of the necessary regulatory governmental bodies is done after incorporating a company. The two major post-incorporation permits required are the business registration certificate from the NIPC and a business permit from the Federal Ministry of Interior.

The process for the registrations involves completing application forms and payment of application fees. Copies of incorporation documents, tax clearance certificate and other documents will be required for the process. The business registration with the NIPC is usually completed within 48 hours or less while the business permit from the Federal Ministry of Interior may take between three to eight weeks or more to process.

Section 55 of the Companies and Allied Matters Act criminalises non-compliance with the requirement of registration of a company by a foreign investor. The penalty for non-compliance is a fine of not less than NGN2,500. Every officer or agent of the company who knowingly and wilfully authorises or permits the

default or failure to comply is also liable, on conviction, to a fine of not less than NGN250 and, where the offence is a continuing one, such a person is liable to a further fine of NGN25 for every day during which the default continues.

2.3 Commitments Required from Foreign Investors

It is expected that a foreign investor will import the capital for their investment into Nigeria as a form of commitment. Thus, one of the documents required for approval of a business permit application is a copy of the company's Certificate of Capital Importation (CCI). The CCI is usually issued by a commercial bank upon receipt of the capital of a foreign investor.

2.4 Right to Appeal

Except for items on the negative list (see **2.1 Approvals of Foreign Investments**), and subject to meeting the requirements for post-incorporation approvals, foreign investments are usually permitted by the relevant authorities. There are no known cases of non-authorisation of a legitimate investor.

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entities

The most common types of corporate vehicles are limited liability companies. This could be a private company limited by shares or a public limited company. A limited liability company is one whose members' liabilities are limited to the amount of unpaid shares held by them in the event of the company's winding up.

The membership of a private company is a minimum of two and a maximum of 50 persons, while its minimum share capital is NGN10,000. A public company has a minimum membership of 50 persons and has no maximum limit. The minimum share capital of a public company is NGN500,000.

A private company is suitable for establishing joint ventures, special purpose vehicles and subsidiaries of foreign entities. A public company is suitable for raising capital from the public through sale of its shares on the stock market. Except for private placements by a public company, it is not a suitable vehicle for FDI, although it would be preferable for FPI as a foreigner can invest remotely by buying stock in the public company.

3.2 Incorporation Process

The main steps and timing of incorporation include reservation of name, which is typically completed within 24 hours. Thereafter, the incorporation documents are prepared, which requires the applicant to input the company's information on the Corporate Affairs Commission's (CAC) registration portal and draft the memorandum and articles of association. Subsequently, the

filing fee and stamp duty is paid online; this can be completed in a few hours. The incorporation documents are then downloaded and printed for execution and notarisation. Upon execution, the incorporation documents are to be scanned and uploaded to the CAC registration portal, after which the documents will be approved and the company incorporated. The original executed documents are then submitted to the CAC, and the certificate of incorporation and certified true copy of the incorporation form and memorandum and articles of association are issued to the company. The incorporation process can be completed within a day or more depending on the ability of the company to provide the necessary information and documents as well as the seamless operation of CAC's registration portal.

3.3 Ongoing Reporting and Disclosure Obligations

The law requires that the decisions of a private company – in respect of (i) a change of name or address, (ii) an alteration of the memorandum or articles of association, (iii) a removal or appointment of directors, (iv) an allotment or transfer of shares, (v) an increase or decrease in share capital, (vi) charges, and (vii) the appointment of a secretary – be filed with the CAC. Additionally, all private companies are required to file their annual returns at the CAC. These requirements also apply to public companies except as they relate to the transfer of shares, since the stock of a public company are freely traded on the stock exchange or over-the-counter markets.

3.4 Management Structures

The management structure for public and private limited liability companies is one-tier in nature. This implies that the board of directors performs both management and supervisory functions.

3.5 Directors', Officers' and Shareholders' Liability

The law puts directors in the position of trustees for their companies; therefore, the primary duty of a director is the fiduciary duty and the exercise of due care, skill and diligence in the discharge of these duties. Thus, an obligation is placed on directors to act in utmost good faith in their dealings with the company. This includes the duty not to place themselves in a position where there is conflict of interest between their duties and their personal interests. Directors are also obliged to attend meetings and not to fetter their discretion to vote in a particular way. This means that directors must disclose their personal interests to the company at every point in time. Failure to abide by these obligations would be a reasonable ground for an action in negligence and breach of fiduciary duty to lie against directors.

Furthermore, the law also allows the piercing of the corporate veil in order to identify the members and directors of a company in the event that a crime is committed by that company.

4. Employment Law

4.1 Nature of Applicable Regulations

The primary law which governs employment relationships in Nigeria is the Labour Act (Chapter L1, Laws of the Federation of Nigeria 2004). The Act is, however, limited in scope as it applies only to workers (ie, persons who perform manual and clerical roles).

Conversely, the Labour Act does not apply to non-workers (ie, persons who perform executive, administrative, technical and professional roles). Rather, their relationship with their employers is governed by the terms of an employment contract, the law of contract and any applicable collective bargaining agreement.

4.2 Characteristics of Employment Contracts

Although the Labour Act acknowledges that employment contracts may be oral or written, express or implied, it mandates employers to issue employment contracts to their workers no later than three months after the beginning of the employment relationship.

The employment contract is required to state:

- the name of the employer;
- the name and address of the worker and the place and date of his or her engagement;
- the nature of the employment;
- if the contract is for a fixed term, the date when the contract expires;
- the appropriate period of notice to be given by any party wishing to terminate the contract;
- terms and conditions relating to:
 - (a) hours of work;
 - (b) holidays and holiday pay; and
 - (c) incapacity for work due to sickness or injury, including any provisions for sick pay; and
- any special conditions of the contract.

There is no statutory requirement in relation to the issuance, form and content of the employment contracts of non-workers. However, in practice, the employment contracts are usually written.

4.3 Working Time

For workers, the Labour Act provides that the hours of work shall be fixed by mutual agreement of the parties, collective bargaining within the organisation or industry concerned, or an industrial wages board. Where workers are required to work for six hours or more in a day, they are to be granted rest-intervals of not less than one hour in total.

In every period of seven days, a worker is to be given one day of rest that must not be less than 24 consecutive hours, and if the rest period is reduced for any reason, the worker is to be granted corresponding time-off from work not later than fourteen days thereafter or be paid wages in lieu at overtime rates.

In addition, although the Labour Act stipulates that any hour which a worker is required to work in excess of the agreed normal hours will constitute overtime, it does not make provision for the rate at which wages for overtime hours are to be paid. This will, therefore, be subject to agreement by an employer and employee.

With respect to non-workers, the working time and overtime hours will be as agreed by the parties and stipulated in an employment contract or collective bargaining agreement.

4.4 Termination of Employment Contracts

An employment contract may be terminated by either an employer or employee upon giving the required length of notice or making payment in lieu of such notice and complying with all other applicable requirements provided for in an employment contract. However, in certain sectors, the consent of a regulator should be obtained before an employer can terminate any employment contract.

In respect of workers, where there is no specific notice period stated in the employment contract or collective bargaining agreement, the following minimum notice periods as set out in the Labour Act will apply:

- one day, where the contract has continued for a period of three months or less;
- one week, where the contract had continued for more than three months but less than two years;
- two weeks, where the contract has continued for a period of two years but less than five years; and
- one month, where the contract had continued for five years or more.

For non-workers in the same position, the courts have held that reasonable notice (which in many cases is a notice of at least one month) should be given.

Failure by an employer to comply with the notice and termination obligations provided by contract or the law could potentially lead to a suit against it for wrongful termination or penalties being imposed by regulators. If the courts decide in favour of the employees, a probable outcome could be that the employer would be required to pay damages to the employees.

Redundancies

Redundancy is defined under the Labour Act as an involuntary and permanent loss of employment caused by an excess of manpower.

In carrying out a redundancy exercise in respect of workers, an employer is required to:

- inform the trade union or workers' representative concerned of the reasons for, and the extent of, the anticipated redundancy;
- adopt the principle of "last in, first out" in the discharge of the particular category of workers affected, subject to all factors of relative merit, including skill, ability and reliability; and
- use its best endeavours to negotiate redundancy payments to any discharged worker.

Although the above requirements only apply to workers, they can be used by employers as a guide when carrying out redundancy exercises in respect of non-workers, subject to the provisions of an employment contract or any applicable collective bargaining agreement.

Failure by an employer to comply with the requirements for carrying out a redundancy exercise could potentially lead to a suit against it for wrongful termination or penalties being imposed by regulators. If the courts decide in favour of the employees, the probable outcome would be that the employer would be required to pay damages to the employees.

4.5 Employee Representations

Unless stipulated under an employment contract or collective bargaining agreement, there is no requirement for employees to be represented, informed or consulted by management.

5. Tax Law

5.1 Taxes Applicable to Employees/Employers

Personal Income Tax

Generally, an employee is considered tax resident in Nigeria where the employer is in Nigeria or has a fixed base in Nigeria, or where the duties of that employment are wholly or partly performed in Nigeria, unless:

- the duties of the employment are performed for, and the remuneration is paid by, a non-resident employer;
- the employee is not in Nigeria for an aggregate of 183 days in any twelve-month period; and
- the remuneration is taxed in the country of the non-resident employer, with which Nigeria must have a double tax treaty.

Employees are allowed a consolidated relief allowance of either NGN200,000 or 1% of gross income, whichever is higher, plus 20% of gross income. The balance of the income after all deductions will be taxed in accordance with the graduated tax scale rates set out below:

- up to NGN300,000 – 7%;
- NGN300,001–600,000 – 11%;
- NGN600,001–1,100,000 – 15%;
- NGN1,100,001–1,600,000 – 19%;
- NGN1,600,001–3,200,000 – 21%; and
- NGN3,200,001 and over – 24%.

Every employer is obliged to withhold and remit its employees' personal income tax to the authority of the state(s) in which such employees are resident under the Pay As You Earn (PAYE) scheme.

Social Security Contributions

An employer with more than 15 employees is required to contribute a minimum of 10% of the monthly emolument of each employee to the retirement savings account of each employee. Employees are required to contribute a minimum 8% of their monthly emoluments to be deducted by their employers.

Employers are required to contribute 1% of the total monthly payroll to the Nigeria Social Insurance Trust Fund for purposes of the Employee's Compensation Scheme, which compensates employees (or their dependents) in the event of injury, disability or death.

Employers in industry or commerce are required to contribute 1% of their annual payroll to the Industrial Training Fund for the purpose of providing industrial training to employees.

An employer is required to maintain a group life insurance policy in favour of its employees for a minimum of three times the annual total emolument of its employees.

5.2 Taxes Applicable to Businesses

Companies Income Tax (CIT)

CIT is imposed on the profits of any company accruing in, derived from, brought into, or received in Nigeria in respect of a trade or business.

Companies incorporated in Nigeria are liable to CIT on their worldwide income.

A non-Nigerian company would be liable for CIT if it:

- has a fixed base in Nigeria;

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- habitually operates a business in Nigeria through a dependent agent;
- executes a turnkey contract in Nigeria;
- provides technical, managerial, consultancy or professional services to a person resident in Nigeria, to the extent that the foreign company has “significant economic presence” in Nigeria; or
- transmits, emits or receives signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity – including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platforms, or online payments – to the extent that the company has “significant economic presence” in Nigeria.

In exercise of her statutory powers, the Minister of Finance issued an order specifying when foreign companies would be deemed to have “significant economic presence” in Nigeria. Under the order, a foreign company that has a Nigerian domain name, registers a website in Nigeria, or has a turnover of NGN25 million (approximately USD64,000) from the provision of all form of digital services to Nigerian residents would be deemed to have “significant economic presence” in Nigeria.

Under the order, foreign companies receiving payment from a Nigerian resident or a permanent establishment for the provision of technical, managerial, consultancy or professional services would be deemed to have “significant economic presence” in Nigeria. Such payment would be liable to a final WHT of 10%.

The CIT rate is 30%. However, small businesses with a turnover of less than NGN25 million are exempt from paying CIT, whilst medium-sized companies with a turnover between NGN25 million and NGN100 million pay CIT at a reduced rate of 20%.

There is also a tertiary education tax of 2% on the same tax base as CIT.

Petroleum Profits Tax (PPT)

Companies engaged in crude oil exploration and production pay PPT at rates that vary between 50% and 85% (depending on the nature of operations).

Notable taxes and levies

- An information technology tax of 1% of profits before tax is payable by specified companies with a turnover of NGN100 million and above. The tax, when paid, is deductible for the company’s income tax purposes.
- A levy of 0.005% of the net profit of a company is payable annually to the Nigeria Police Trust Fund.

- An oil and gas company is required to pay 3% of its annual budget to the Niger Delta Development Commission for tackling ecological problems in the Niger Delta, where most of Nigeria’s oil is produced.

Withholding Tax (WHT)

Withholding tax (WHT) of 10% applies to payment of passive income (interest, dividends, royalties, and rents). Where a dividend is paid to a Nigerian company, the amount deducted as withholding tax is treated as franked investment income and is not subject to further tax in the hands of the recipient.

The WHT on payment of passive incomes to a non-Nigerian company is treated as the final tax and the rate is reduced to 7.5% where the recipient is a resident of a country with which Nigeria has signed a double tax treaty.

WHT of 10% applies to payment of technical, managerial, consultancy, or professional services rendered by companies. The WHT is the final tax when the services are rendered by a non-resident company.

Value Added Tax (VAT)

VAT is levied on the supply of all goods and services supplied to a person resident in Nigeria at the rate of 7.5%. VAT is collected by the supplier except where the supplier is a foreign company, in which case the Nigerian-resident beneficiary is required to remit the VAT directly to the Federal Inland Revenue Service (FIRS). Oil and gas companies (including oil service companies), ministries, departments, and agencies of governments are also required to pay the VAT on the invoices from their suppliers directly to the FIRS.

Capital Gains Tax

Capital gains tax of 10% is payable on chargeable gains arising from the disposal of chargeable assets.

Stamp Duty

Stamp duty is paid on instruments executed in Nigeria or relating to any property situated, or to any matter or thing done or to be done, in Nigeria. The stamp duty rates differ for various instruments and can be as high as 6% of the value of the underlying transaction.

Property Taxes

Owners of real properties are subject to such rates, and levies as may be imposed by the states in which the properties are situated. For instance, in Lagos State, landowners are required to pay a land use charge which is calculated as a percentage of the assessed value of a land.

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In many states, the holder of an interest in land is required to register that interest and registration fees may be as high as 6%.

5.3 Available Tax Credits/Incentives

Gains arising on the disposal of Nigerian government securities or shares of companies are exempt from capital gains tax.

There is a 20% tax credit for expenditure on R&D, in addition to capital allowance (up to 95% in the first year), in lieu of depreciation.

Foreign-earned passive income brought into Nigeria through any of the commercial banks is exempt from CIT.

Income from bonds issued by sovereign or sub-sovereign entities, and those of corporate bodies, are exempt from CIT in the hands of bondholders. The exemption for corporate bonds will lapse in 2022.

Interest on long-term foreign loans with repayment periods above seven years (with a two-year grace period), those with repayment periods between five to seven years (with not less than 18 months' grace period), and those with repayment periods between two to four years (with not less than 12 months' grace period), respectively, enjoy CIT exemption of 70%, 40%, and 10%.

Venture capital companies that invest in venture capital projects and provide at least 25% of the total project cost enjoy a 50% WHT reduction on dividends received from project companies and capital allowance on their equity investments in venture project companies, as well as tax exemption on gains arising from the disposal of such equity.

Companies engaged in crude oil production enjoy an investment tax credit (ITC) or an investment tax allowance (ITA) of between 5% and 50% of their qualifying expenditure. The ITC operates as a full tax credit and does not result in a deduction from qualifying capital expenditure for the purposes of calculating capital allowances. The ITA is deductible from profits in arriving at taxable profits.

A company engaged in a "pioneer industry" or a "pioneer product" (as designated by the government of the day) may apply for a "pioneer status" which, when granted, entitles it to:

- a three-year tax holiday, which may be extended for two further terms of one year each or for one further term of two years;
- relief from WHT on dividends paid to its shareholders during the tax holiday; and

- postponement of capital allowance until the end of the tax holiday.

Approved enterprises operating within a free trade zone are exempt from all federal, state and local government taxes, levies and rates.

5.4 Tax Consolidation

Nigerian law does not permit consolidated tax grouping; each company within a group is, therefore, taxable in Nigeria on an individual basis. Consequently, losses suffered by one member of a group of companies cannot be used to reduce the tax liability of another company within the group, but can be carried forward and set off against the future profits of the company that incurred them.

5.5 Thin Capitalisation Rules and Other Limitations

Existing anti-avoidance provisions allow the Nigerian tax authority to disallow/reduce interest charged between related parties, where that interest is not reflective of the arm's length principle.

Furthermore, the tax deductibility of interest expenses on a foreign-party loan is limited to 30% of EBITDA in any given tax year and deductible interest expenses not fully utilised can be carried forward for a maximum of five years.

5.6 Transfer Pricing

The arm's length standards in the transfer pricing standards and guidelines issued by the OECD and the UN apply in Nigeria unless they conflict with the domestic transfer pricing legislation.

5.7 Anti-evasion Rules

There are anti-avoidance provisions in the various tax laws that empower the tax authorities to make necessary adjustments to counteract any reduction to tax that would result from transactions that are considered artificial.

There is legislation that empowers the tax authorities to tax undistributed profits of a Nigerian company where that company is controlled by five persons or fewer.

6. Competition Law

6.1 Merger Control Notification

Pursuant to the Federal Competition and Consumer Protection Act 2018 (the FCCPA), any merger or acquisition that results in a change of control of a business in Nigeria will come under the

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regulatory purview of the Federal Competition and Consumer Protection Commission (FCCPC).

The provisions of the FCCPA apply to all undertakings and all commercial activities within, or having effect within, Nigeria. They also apply to conduct outside Nigeria by any person in relation to the acquisition of shares or other assets outside Nigeria resulting in the change of control of a business, part of a business or any asset of a business, in Nigeria. In essence, any foreign-to-foreign merger that results in a change of control of a Nigerian business will come under the FCCPC's regulatory purview.

A merger occurs where there is direct or indirect control over the whole or part of the business of another undertaking. It may be achieved through:

- the purchase or lease of shares, an interest or assets;
- the amalgamation or other combination; and
- joint venture.

Mergers are categorised into small and large mergers.

The FCCPC must be notified of a merger before implementation, if, in the financial year preceding the merger:

- the combined annual turnover of the acquiring undertaking and the target undertaking in, into or from Nigeria equals or exceeds NGN1 billion; or
- the annual turnover of the target undertaking in, into or from Nigeria equals or exceeds N500 million.

It is presumed that a merger with an annual turnover below the threshold will constitute a small merger and those above the threshold would constitute a large merger.

A transaction classified as a small merger may be implemented without notifying the FCCPC. However, where the FCCPC is of the opinion that a small merger may substantially prevent or lessen competition, it may, within six months after the implementation of that merger, require that the parties notify it of the merger. Parties to a small merger may also voluntarily notify the FCCPC of the merger at any time.

6.2 Merger Control Procedure

Where the FCCPC determines that a small merger is to be notified to it, the notification is to be published within five business days after receipt by the FCCPC. The parties are to take no further steps to implement the merger until it has been approved by the FCCPC. The FCCPC is to make its decision within 20 business days of the parties fulfilling the notification requirement or extend the time that it will consider the merger by a single

period not exceeding 40 business days and issue an extension notice to the notifying party.

In terms of a large merger, the FCCPC is required to respond within 60 days after the parties to the large merger have fulfilled the notification requirements. The parties shall not implement the merger until it has been approved the FCCPC. The FCCPC may extend the period in which it has to consider the proposed merger to 120 business days and issue an extension notice to all parties to the merger.

Where the FCCPC fails to issue a report regarding its consideration of the merger within the prescribed periods (including any extension period where an extension notice is issued), the merger shall be deemed approved. However, the FCCPC is empowered to revoke this approval.

With regard to foreign-to-foreign mergers, an expedited procedure has been introduced, by which the FCCPC is expected to conclude its review of the transaction and issue a decision within 15 business days. An expedited procedure fee is to be paid in addition to the application fee.

6.3 Cartels

The applicable legislation is the FCCPA. The FCCPA prohibits restrictive agreements, which are defined as any agreement among undertakings or a decision of an association of undertakings that has the purpose (or actual or likely effect) of preventing, restricting or distorting competition in any market. However, there is an exemption to the above; namely where the agreements are authorised by the FCCPC.

In addition, an undertaking is prohibited from requesting another undertaking to refuse to sell or purchase any goods or services with the intention of harming certain undertakings. Moreover, the FCCPA prohibits the unlawful withholding of products from a dealer. An undertaking will be treated as withholding goods or services from a dealer if:

- the undertaking refuses to supply those goods or services to the order of the dealer;
- the undertaking refuses to supply the goods or services to the dealer except at prices (or on terms or conditions as to credit, discount or other matters) that are significantly less favourable than those at or on which the undertaking normally supplies those goods or services to other dealers carrying on business in similar circumstances; or
- the undertaking treats the dealer in a manner less favourable than that in which it normally treats other dealers in respect of time or methods of delivery or other matters arising in the execution of the agreement.

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The FCCPA prohibits any term or condition of an agreement for the sale of any goods or services to the extent that it purports to establish minimum prices to be charged on the resale of the goods or services in Nigeria.

6.4 Abuse of Dominant Position

The FCCPA prohibits actions that constitute an abuse of dominant position. An undertaking will generally be considered to be in a dominant position if it is able to act without taking account of the reaction of its customers, consumers or competitors.

The factors that are taken into account in assessing market dominance include:

- the market share of the undertaking or undertakings concerned in the relevant market;
- financial power;
- access to supplies or markets;
- links with other undertakings;
- legal or factual barriers to market entry by other undertakings;
- actual or potential competition;
- ability to shift supply or demand to other goods or services; and
- the ability of the opposite market side to resort to other undertakings.

The FCCPA expressly provides that the following acts will constitute an abuse of a dominant position:

- charging an excessive price to the detriment of consumers;
- refusing to give a competitor access to an essential facility when it is economically feasible to do so;
- engaging in an exclusionary act, other than an act listed in points a) to e) below, if the anti-competitive effect of that act outweighs its technological efficiency and other pro-competitive gains; and/or
- engaging in any of the following exclusionary acts, unless the firm concerned can show technological efficiency and other pro-competitive gains, which outweigh the anti-competitive effect of its act:
 - (a) requiring or inducing a supplier or customer not to deal with a competitor;
 - (b) refusing to supply scarce goods to a competitor when supplying those goods is economically feasible;
 - (c) selling goods or services on condition that the buyer purchases separate goods or services unrelated to the object of a contract, or forcing a buyer to accept a condition unrelated to object of a contract;
 - (d) selling goods or services below their marginal or average cost; or

- (e) buying up a scarce supply of intermediate goods or resources required by a competitor.

In addition to abuses specifically provided, it is also implied that “exclusive dealings”, as defined in the FCCPA, will constitute an abuse of a dominant position, unless it is carried on between affiliated or interconnected undertakings.

7. Intellectual Property

7.1 Patents

Inventions are patentable in Nigeria if they are new, result from inventive activity and are capable of industrial application; or if they constitute a new improvement on an already patented invention.

An invention is considered new if it does not form part of the state of the art (ie, the field of knowledge relating to the invention which has been made available to the public before the date of filing a patent application). An invention is deemed to result from inventive activity if it does not obviously follow from the state of the art and is deemed capable of industrial application if it can be manufactured or used in any kind of industry, including agriculture.

A patent cannot be obtained in respect of plant or animal varieties, essentially biological processes for the production of plants or animals, or any invention whose publication or exploitation would be contrary to public order or morality.

The right to patent an invention is vested in the first person to file a patent application in Nigeria or validly claim priority to a foreign application, whether or not he or she is the true inventor. The true inventor must, however, be named in the patent, even if he or she is not the person applying for the patent.

An application for a patent is to be made to the Registrar of Patents and accompanied by a description of the relevant invention with any appropriate plans and drawings. The application process typically takes about 12 months.

There is no substantive examination of patents by the Registrar before a grant is made in respect of an invention. As such, patents are granted at the risk of the patentees and without a guarantee of their validity. A patent, when granted, is valid for a period of 20 years from the date of filing, subject to the payment of the prescribed annual fees.

A patent gives the patentee the exclusive right to exploit his or her invention. The patentee’s rights under a patent, however, extend only to acts done for industrial or commercial purposes.

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A patentee whose rights have been infringed may institute a civil action against the infringer and claim reliefs such as damages, injunction and account of profits.

7.2 Trade Marks

A trademark is a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof. Marks that are deceptive, scandalous, generic, descriptive, geographical names in their ordinary signification, or the commonly used and accepted names of chemical substances cannot be registered as trademarks in Nigeria.

Nigeria is a first-to-file jurisdiction. Therefore, for a mark to enjoy statutory protection, it must be registered in Nigeria. An application to register a trademark is to be made to the Registrar of Trade Marks and must contain the specification of goods/services in relation to which the trademark is to be used. It is not acceptable to simply make a statement that the application is to cover all the goods/services in any particular class.

The Registrar, on receipt of an application, will issue a letter of acknowledgement containing all relevant filing details of the trademark application (eg, temporary number, date of application, the trademark, etc). The Registrar, thereafter, examines the trademark for distinctiveness, similarity with existing registered trademarks and general compliance with the requirements of the law.

Where the Registrar is satisfied, he will issue a Notification of Acceptance for the mark to be advertised in the Trademarks Journal for opposition purposes. Otherwise, the mark is refused and a Letter of Refusal is issued stating the reason(s) for the refusal. An applicant, through its local agent, may appeal a refusal within two months, otherwise the application will be deemed abandoned.

When a trademark is advertised in a Trademarks Journal, any person may, within two months from the date of the publication, give notice to the Registrar of their opposition to the registration of the mark. Where no opposition is received at the expiration of the opposition period, or where the opposition is determined and resolved in favour of the applicant, the Registrar will issue a certificate of registration upon payment of the prescribed fee.

Currently, the registration process may take up to three years. A trademark is registered for an initial period of seven years but can be renewed for further periods of 14 years.

The registration of a person as the proprietor of a trademark in respect of any goods or services gives that person the exclusive right to the use of that trademark in relation to those goods or services. A proprietor whose trademark rights have been

infringed may institute a civil action against the infringer and claim reliefs such as damages, injunction and account of profits.

7.3 Industrial Design

An industrial design refers to any combination of lines or colours or both – and any three-dimensional form, whether or not associated with colour – if it is intended by the creator to be used as a model or pattern to be multiplied by an industrial process, and is not intended solely to obtain a technical result.

An industrial design can be registered in Nigeria if it is new and is not contrary to public order or morality. An industrial design will not be considered new if, before the date of application for registration, it has been made available to the public unless the creator of the design can prove that they had no knowledge that it had been made so available.

The right to registration of an industrial design is vested in the person who, whether or not they are the true creator, is the first to file, or validly to claim a foreign priority for, or an application for registration of, the design. The true creator is, however, entitled to be named in the application.

An application to register an industrial design is to be made to the Registrar of Patents and Designs and accompanied by a specimen of the design or a photographic or graphic representation of the design and an indication of the kind of product for which the design will be used.

The registration of an industrial design is effective in the first instance for five years from the date of the application for registration and can be renewed for two further consecutive five-year periods, each upon payment of the prescribed fees.

The registration of an industrial design gives the creator the exclusive right to exploit their design. The creator's rights, however, extend only to acts done for industrial or commercial purposes. A creator whose rights have been infringed may institute a civil action against the infringer and claim reliefs such as damages, injunction and account of profits.

7.4 Copyright

Under Nigerian law, musical, literary and artistic works, cinematograph films, sound recordings and broadcasts enjoy copyright protection. A work is, however, not eligible for copyright unless sufficient effort has been expended to give it an original character and it is fixed in a definite medium of expression.

The law does not provide for the registration of copyright as it arises automatically upon the creation of a work. However, in fulfilling its mandate of creating a databank of authors and their works, the Nigerian Copyright Commission (NCC) has

established a voluntary notification process by which authors can notify the NCC of their works.

Copyright in literary, artistic and musical works lasts for 70 years from the date of the author's death. Copyright in films and photographs subsists for 50 years from the date of the first publication of the work while copyright in sound recordings and broadcasts subsists for 50 years from the date of the making of the first recording or the broadcast.

Copyright gives the owner of the eligible work the exclusive right to exploit that work. Where the right of a copyright owner is infringed, they may institute a civil action against the infringer and claim reliefs such as damages, injunction and account of profits. In addition, it is an offence under the law for persons to deal with infringing works and such persons may, if found guilty, be liable to a fine or imprisonment.

7.5 Others

Software (referred to as computer programs under Nigerian law) and neighbouring rights (covering performers' rights and expressions of folklore) are protected as copyright in Nigeria.

Trade secrets are, however, not statutorily protected in Nigeria.

8. Data Protection

8.1 Applicable Regulations

The main regulation applicable to data protection is the Nigeria Data Protection Regulation (NDPR) issued by the National Information Technology Development Agency (NITDA) on 15 January 2019.

Furthermore, the NITDA developed a draft Nigerian Data Protection Regulation – Implementation Framework (Framework). Although, the Framework is in its draft format, it offers hints of NITDA's expectation in terms of compliance with the NDPR.

8.2 Geographical Scope

The NDPR is applicable to the processing of data of Nigerians and non-Nigerian residents. The legal basis for processing the data must also be established.

Therefore, companies targeting customers in Nigeria must ensure compliance with the NDPR.

8.3 Role and Authority of the Data Protection Agency

NITDA is responsible for the enforcement of data protection rules in Nigeria.

NITDA is a statutory body responsible for the development of regulations for electronic governance, monitoring of the use of electronic data interchange and other forms of electronic communication transactions in government, commerce, education, the private and public sectors, labour, and other fields where the use of electronic communication may improve the exchange of data and information. Further to its powers, NITDA issued the NDPR to safeguard, regulate and protect personal information.

NIGERIA LAW AND PRACTICE

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ÆLEX is a full-service commercial and dispute resolution law firm. It is one of the largest law firms in West Africa with offices in Lagos, Port Harcourt and Abuja in Nigeria, and Accra, Ghana. ÆLEX merges local legal expertise and presence, as well as political and industry-wide connections, with an appreciation of global standards. Its lawyers are experts in their fields, and many have multi-disciplinary backgrounds and experience.

The firm's clients include banks, multi-national corporations, government, parastatals, listed companies, and entrepreneurs. Diverse practice groups work together on transactions where multiple areas of law are involved, ensuring that clients benefit from both individually tailored advice and the collective might of the entire firm's expertise.

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ALEX

Trends and Developments

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Since the rebasing of its economy in 2014, Nigeria has become the largest economy in Africa. The country has also taken several steps to reposition itself as a regional force and a preferred destination for foreign direct investment. These efforts have seen it move up by several spots in the World Bank's ease of doing business index.

However, over the last 12 months, Nigeria has faced a variety of economic challenges that have been further heightened by the COVID-19 pandemic that has affected businesses globally. The Nigerian government has therefore been constrained in coming up with policies and legislative reforms that can sustain local businesses and also attract more investment in different areas of the country's economy.

Some of the key legislative reforms and developments in Nigeria are discussed below.

Taxation

The Finance Act, 2019

The year 2020 kicked off with the presidential assent to the Finance Bill (the Finance Act) on 13 January 2020. The Finance Act introduced substantial changes to the tax regime, including:

- the introduction of “digital permanent establishments” for non-resident companies with a significant economic presence, as may be determined by the Minister of Finance;
- increasing the rate of VAT from 5% to 7.5%;
- introduction of the “destination-based principle” for the collection of VAT; and
- exempting small companies with an annual turnover below NGN25 million (approximately USD64,000) from paying companies income tax and collecting VAT.

COVID-19 emergency tax measures

Following the outbreak of COVID-19 in Nigeria, a number of emergency tax measures were introduced.

The Emergency Economic Stimulus Bill was passed by the House of Representatives. The bill, inter alia, grants a 50% tax rebate on PAYE remittances to eligible employers. The Bill also suspends the payment of import duty on medical equipment, medicines, personal protective equipment and other medical necessities required for the treatment and management of

COVID-19 in Nigeria. The Bill will take effect when passed by the Senate and assented to by the President.

The Federal Inland Revenue Service (FIRS) has also extended the deadline for filing VAT, withholding tax, and companies' income tax returns.

Taxes required to be paid in foreign currency to the FIRS can be paid in naira at the prevailing rate at the Investors and Exporters FX Window on the day of payment.

The deadline for filing personal income tax returns has been extended by the Lagos Internal Revenue Service (LIRS) by two months (from 31 March to 31 May 2020), and by 3 months (from 31 March to 30 June 2020) by the Federal Capital Territory Internal Revenue Service.

Africa Continental Free Trade Agreement

In the last year, the move towards boosting intra-African trade has witnessed tremendous growth. The African Continental Free Trade Agreement (AfCFTA), which aims at creating a single market for goods and services and allowing free movement of persons, became operational on 30 May 2019 upon reaching the threshold requirement for at least 22 countries to deposit their instruments of ratification. At the moment, 55 African Union member states, including Nigeria, have signed the AfCFTA leaving Eritrea as the only country yet to sign. As of May 2020, 30 countries have deposited their instruments of ratification, the AfCFTA Secretary General has been appointed and sworn into office, and negotiations are progressing.

Trading under the AfCFTA was scheduled to commence on 1 July 2020. However, as a result of the COVID-19 global pandemic, the commencement date for trading has now been postponed with no new date in sight. This postponement of the trading start date can work to the advantage of those countries that are yet to deposit their instruments of ratification, as it affords them more time to develop and complete their ratification processes.

Whenever trading in goods and services eventually commences, it will create a paradigm shift in intra-African trade as member states will have to deal with competitiveness, adjustment costs, safety measures, etc. Nonetheless, the AfCFTA will positively

impact the economy of member states and boost integration and industrialisation across the continent.

Telecommunications

Nigerian National Broadband Plan 2020-2025

Following the inauguration of the Nigerian National Broadband Plan 2020-2025 Presidential Committee, on 16 December 2019, the Nigerian Communications Commission (NCC), in March 2020, rolled out the Nigerian National Broadband Plan 2020-2025 (the Plan), which seeks to drive the implementation of broadband connectivity and the deployment of 4G across Nigeria, as well as the development and implementation of a digital economy policy and strategy.

The objectives of the Plan include the delivery of data download speeds across Nigeria of at least 25Mbps in urban areas and 10Mbps in rural areas, with effective coverage available to at least 90% of the population by 2025 at a price of not more than NGN390 per 1GB of data. It is hoped that the implementation of the Plan will lead to the creation of jobs, improved socio-economic development and sustained economic growth amongst other things.

Draft Guidelines on the use of television white spaces

The Nigerian Communications Commission (NCC), in conjunction with the National Broadcasting Commission (NBC), has developed draft guidelines for the use of television white spaces (TVWS) for rural broadband connectivity in Nigeria (the Guidelines), which are aimed at enhancing the delivery of the digital economy agenda of the Federal Government of Nigeria.

The Guidelines, when they come into effect, will establish a framework which will allow licence-exempt transmitters to utilise the unassigned spectrum between broadcast television channels in the 470 to 694 MHz portion of the UHF band to provide internet access to the under-served and unserved regions of the country, mostly in rural service areas at broadband speeds.

Financial Technology

The Securities and Exchange Commission (SEC), which is the apex regulator of the Nigerian capital market, recently published an exposure draft of its proposed rules on crowdfunding in Nigeria (the Rules). The Rules seeks to regulate crowdfunding in Nigeria (which is currently unregulated) and establish a framework for the raising of funds from the public through an online platform to finance a project or business.

The Rules sets out various conditions for participation in a funding round in Nigeria. Micro, small and medium enterprises with a minimum of two years' operating track record will be eligible to raise funds through a crowdfunding portal registered by the

SEC, subject to the maximum fund-raising limits set by the SEC. However, complex structures (defined as entities without immediate transparency of ownership and/or control, thereby making it difficult to immediately ascertain the beneficial owners), public listed companies and their subsidiaries, companies with no specific business plan, or a blind pool cannot raise money. Furthermore, companies that propose to use the funds raised to provide loans or invest in other entities are not permitted to raise funds through a crowdfunding portal.

The draft rules are a welcome development as they will, when effective, provide a reliable channel for businesses to raise funds whilst also protecting the interests of, and providing comfort to, potential investors.

Data Protection

In January 2019, Nigeria witnessed the birth of the Nigerian Data Protection Regulation (NDPR) issued by the National Information Technology Development Agency (NITDA). Since the introduction of the NDPR, there have been certain enforcement actions taken by NITDA, some of which include the issuance of some guidelines.

Draft Nigerian Data Protection Regulation – Implementation Framework

In July 2019, NITDA published the draft Nigerian Data Protection Regulation – Implementation Framework and sought the contributions of stakeholders. This Framework clarified the provisions of the NDPR and explained certain requirements.

Guidelines for Management of Personal Data by Public Institutions

More recently, the NITDA issued the Guidelines for Management of Personal Data by Public Institutions in Nigeria. NITDA mandated all public institutions to digitalise Nigerians' personal data, while also emphasising the importance of secure technology for such automated processes.

Indeed, NITDA is taking strides to ensure that data protection laws are upheld in Nigeria. Given that the NDPR applies to the processing of personal data, it is applicable to many businesses. In ensuring compliance with the NDPR, actions should be taken making businesses more sensitive to the NDPR obligations.

Merger Control

The Federal Competition and Consumer Protection Act, 2019 (the Act) repealed certain sections of the Investment and Securities Act (ISA), which provided for merger control. One of the effects of this is that the power to review and approve mergers from an antitrust/competition standpoint moved from the SEC to the Federal Competition and Consumer Protection Commis-

NIGERIA TRENDS AND DEVELOPMENTS

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sion (FCCPC). To implement the Act, the FCCPC issued two guidelines, discussed below.

Guidelines on Foreign-to-Foreign Mergers

The FCCPC issued the Guidelines on Simplified Process for Foreign-to-Foreign Mergers with Nigerian Component on 13 November 2019. The guidelines were a result of Section 2(3)(d) of the Act, which stated that the Act applies to "...the acquisition of shares or other assets outside Nigeria resulting in the change of control of a business, part of a business or any asset of a business, in Nigeria." In other words, offshore mergers that lead to the change of control of a Nigerian business fall under the regulatory scope of the Act.

Notice of Threshold for Merger Notification

In terms of Section 93(4) of the Act, the FCCPC is empowered to determine the threshold of annual turnover for the purpose of determining what constitutes a small or large merger, and the method for calculation of annual turnover to be applied in relation to the threshold. As a result, the FCCPC issued the Notice of Threshold for Merger Notification. The Notice prescribes that the Commission shall be given notice of a merger before implementation if, in the financial year preceding the merger:

- the combined annual turnover of the acquiring undertaking and the target undertaking in, into or from Nigeria equals or exceeds NGN1 billion (approximately USD3.27 million); or
- the annual turnover of the target undertaking in, into or from Nigeria equals or exceeds NGN500 million (approximately USD1.63 million).

In addition to the guidelines above, the FCCPC is developing comprehensive regulations and guidelines to guide its review of mergers and further implement the provisions of the Act. The draft regulations and guidelines have been released for consultation.

Immigration

Nigeria's immigration framework has recorded some developments over the last couple of months. Two major developments in this regard are the activation of an e-registration platform for migrants, as provided by the Migrant e-Registration Guidelines, as well as the New Visa Policy which optimised the visa regime in Nigeria.

The e-registration of migrants is aimed at easy collection of biometric data and verification of immigration documents of all adult migrants residing in Nigeria for more than 90 days. It is expected that this initiative will help to check the influx of illegal migrants to Nigeria.

The new visa policy also aims at boosting tourism as well as promoting business opportunities and investment. The policy established new visa categories and the automation of the temporary work permit (TWP) application process. This has provided a clear and unambiguous visa regime in Nigeria and should be adequately sustained and improved upon over time.

Oil and Gas

Reduction of the benchmark price for crude in Nigeria's 2020 budget

Part of the effect of the COVID-19 pandemic has been a substantial decline in the price of crude oil. This decline has required a re-evaluation of the benchmark price for crude in Nigeria's 2020 budget. The budget which was passed into law in January 2020 had initially placed the benchmark at USD57 per barrel (bbl), and revised this to USD\$30/bbl in April 2020. However, with the continued decline of oil prices, the Minister of Finance announced on May 5, that the benchmark would be further revised to USD20/bbl.

Marginal fields bid round 2020

Notwithstanding the collapse in the price of crude oil and in global consumption, the Nigerian government has recently announced the commencement of the bid rounds for marginal fields. Marginal fields mean discovered fields that have been left unattended for a period of not less than ten years from the date of first discovery. It also includes any field which the president identifies as a marginal field.

The bid round is aimed at improving indigenous participation in oil and gas exploration and production, as it requires interested companies to be wholly or substantially Nigerian owned. The Department of Petroleum Resources (DPR) issued the applicable guidelines on 31 May 2020, which are referred to as the Guidelines for the Award and Operations of Marginal Fields in Nigeria. The Guidelines will govern the entire process from the period of the announcement of the bid round to award of the fields to preferred bidders, and subsequently to the negotiation and execution of farm-out contracts to govern operations. A total of 57 fields have been identified for the proposed bid round.

DPR circulars on management of the COVID-19 pandemic in the oil and gas sector

On 29 March 2020, the DPR, which is the department responsible for ensuring compliance in the oil and gas sector, issued a circular wherein it directed operators, and other industry players to reduce their work force on offshore platforms. The circular also suspended rotation of offshore staff for periods which are less than 28 days, implying therefore that staff who are required to work offshore during the pandemic are required

TRENDS AND DEVELOPMENTS NIGERIA

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to remain in such locations for at least 28 days, before they are rotated.

In another circular, issued on 30 March 2020, the DPR specifies measures which operators, contractors and other industry players are required to take in carrying out their activities at project and construction sites within Nigeria. It further stated that industry players should consider the current situation as force majeure and ensure the safety of all personnel, while doing their best to contain the spread of COVID-19.

Power

Suspension of the expected electricity tariff increase amidst COVID-19

In December, the Nigerian Electricity Regulatory Commission (NERC) had planned to sanction a minor review of electricity tariffs by the December 2019 Minor Review of Multi-Year Tariff Order 2015 and Minimum Remittance Order for the year 2020 (Minor Review and Minimum Remittance Order). By this minor review, electricity tariffs were expected to increase gradually from 1 April 2020, and transition to a full cost reflective tariff by the end of 2021. However, in light of the effect of the COVID-19 pandemic, NERC has effectively postponed the take-off date by the Order on the Transition to Cost Reflective Tariffs in the Nigerian Electricity Supply Industry. The Minor Review and Minimum Remittance Order is expected to remain in force until 30 June 2020. As we approach the cut-off date, and considering that the pandemic is still present, it is expected that a new minor review of the tariffs will be issued by the NERC in the coming weeks.

Banking and Finance

The Nigerian Banking and Finance Sector has seen a flurry of developments especially as the apex bank, the Central Bank of Nigeria (CBN), tries to mitigate the effects of the COVID-19 Pandemic.

The CBN has approved regulatory forbearance for the restructuring of credit facilities granted by non-bank financial institutions (NBFIs). This meant a one-year moratorium on principal repayments of CBN intervention facilities granted through NBFIs; the reduction of interest rates on CBN intervention facilities from 9% to 5% per annum; and that NBFIs may consider temporary and time limited restructuring of the tenor and term loans for households and businesses affected by the COVID-19 pandemic.

The CBN revised the deadline for compliance with the new minimum capital requirements of microfinance banks (MFB) by one year. MFBs operating in rural, unbanked and under-banked areas are now expected to meet the NGN35 million capital threshold by April 2021, MFBs operating in urban and

high density banked areas are expected to meet the NGN100 million capital threshold by April 2021 and the NGN200 million capital threshold by April 2022. State MFBs are expected to meet the NGN500 million capital threshold by April 2021 and the NGN1 billion capital threshold by April 2022, and national MFBs must meet the NGN3.5 billion capital threshold by April 2021 and the 5 billion capital threshold by April 2022.

The CBN issued the Operational Guidelines for Credit Support to the Healthcare Sector. This followed the announcement of the NGN100 billion credit support intervention fund for the healthcare industry, particularly targeted at indigenous pharmaceutical companies and other healthcare-value-chain players intending to build or expand capacity. This fund may be accessed through deposit money banks (DMBs) and development finance institutions (DFIs)

Outside of COVID-19 policy measures, the CBN has also issued the Revised Standards on the Nigeria Uniform Bank Account Number (NUBAN) for banks and NBFIs. The previous NUBAN Standards were expanded to include NBFIs to take effect from 20 April 2020 and set a deadline of 15 March 2021 for full compliance. This is further to the mandate of the apex bank to further the development of the electronic payments system in Nigeria.

Maritime

With the alarming increase of piracy and armed robbery in the Gulf of Guinea, and with many of these incidents occurring within the Lagos seaport in 2019, the Nigerian government carried out a much-needed intervention in the Nigerian maritime sector by enacting an anti-piracy law. Consequently, in June 2019, the Suppression of Piracy and other Maritime Offences Act 2019 (the SUPOMO Act) was signed into the law, thereby making Nigeria the first country in West and Central Africa to have a standalone anti-piracy law. The SUPOMO Act criminalises the offences of piracy, armed robbery against ships, cargo theft and other related maritime offences, and provides a legal framework for prosecuting piracy and other maritime crimes through the country's maritime security enforcement agencies: the Nigerian Navy and the Nigerian Maritime Administration and Safety Agency. The law gives effect to the provisions of the United Nations Convention on the Law of the Sea (UNCLOS), 1982, and the International Convention on the Suppression of Unlawful Acts against the Safety of Navigation (SUA), 1988, and its Protocols.

It is hoped that the enactment of the SUPOMO Act will address the lingering issues of piracy and armed robbery at sea, which Nigeria has grappled with in recent times through prosecution. Although, some provisions of the SUPOMO Act are ambiguous, it provides a framework for dealing with sea piracy and other

NIGERIA TRENDS AND DEVELOPMENTS

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unlawful acts at sea. As Nigeria is gradually easing the lockdown measures imposed in view of COVID-19, one should expect to see implementation guidelines as well as Nigerian courts' interpretation of the ambiguous provisions in the SUPOMO Act.

Insolvency

In a bid to (i) create enabling conditions for investment, (ii) promote business rescue and (iii) improve the ease of doing business in Nigeria, the Nigerian Senate, on 10 March 2020, passed the Companies and Allied Matters Act (Repeal and Re-enactment) Bill (the CAMA Bill). The CAMA Bill is currently before the President awaiting his assent.

It is expected that when the CAMA Bill is passed into law, it will bridge the gap in the existing legal framework for corporate insolvency. With regards to corporate insolvency, a key advantage of the CAMA Bill is that it prioritises business rescue above liquidation and receivership. This insolvency reform introduces corporate reorganisation for financially distressed companies (or companies on the verge of financial distress) – such as company voluntary arrangement (CVA) and administration – in line with international best practices. It is expected that before liquidation or receivership is considered, options such as CVA and administration would be explored.

Furthermore, the insolvency reforms now increase the period for determination of fraudulent preference with express provisions allowing the courts to make orders restoring the company to the position it would have been in, if it had not engaged in the transaction. Where transactions are suspected to have been carried out at an under value before the onset of insolvency, a liquidator or administrator may apply to a court for an order restoring the distressed company to the position it was in before engaging in the transaction. In addition, in the course of a CVA, administration, and/or liquidation, a company may enter into contracts for supply of essential services, on certain conditions.

The reforms may change the focus of the Nigerian insolvency framework from business liquidation to business rescue. They could also balance out the interests of both the creditors and the company (debtor).

TRENDS AND DEVELOPMENTS NIGERIA

Contributed by: Davidson Oturu, Rebecca Ebokpo, Chioma Olibie, Oluwasemiloore Atewologun, Jibrin Dasun, Frances Obiabo, Florence Bola-Balogun and Crystal Okwurionu, ÆLEX

ÆLEX is a full-service commercial and dispute resolution law firm. It is one of the largest law firms in West Africa with offices in Lagos, Port Harcourt and Abuja in Nigeria, and Accra, Ghana. ÆLEX merges local legal expertise and presence, as well as political and industry-wide connections, with an appreciation of global standards. Its lawyers are experts in their fields, and many have multi-disciplinary backgrounds and experience.

The firm's clients include banks, multi-national corporations, government, parastatals, listed companies, and entrepreneurs. Diverse practice groups work together on transactions where multiple areas of law are involved, ensuring that clients benefit from both individually tailored advice and the collective might of the entire firm's expertise.

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NIGERIA TRENDS AND DEVELOPMENTS

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