
CHAMBERS GLOBAL PRACTICE GUIDES

Doing Business In... 2023

Definitive global law guides offering
comparative analysis from top-ranked
lawyers

Nigeria: Law & Practice

Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu,
Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman
and Nahimat Yusuf

ÆLEX



NIGERIA



Law and Practice

Contributed by:

Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf

AELEX

Contents

1. Legal System p.6

1.1 Legal System and Judicial Order p.6

2. Restrictions on Foreign Investments p.6

2.1 Approval of Foreign Investments p.6

2.2 Procedure and Sanctions in the Event of Non-compliance p.8

2.3 Commitments Required From Foreign Investors p.8

2.4 Right to Appeal p.8

3. Corporate Vehicles p.9

3.1 Most Common Forms of Legal Entity p.9

3.2 Incorporation Process p.9

3.3 Ongoing Reporting and Disclosure Obligations p.9

3.4 Management Structures p.9

3.5 Directors', Officers' and Shareholders' Liability p.9

4. Employment Law p.10

4.1 Nature of Applicable Regulations p.10

4.2 Characteristics of Employment Contracts p.10

4.3 Working Time p.10

4.4 Termination of Employment Contracts p.11

4.5 Employee Representations p.12

5. Tax Law p.12

5.1 Taxes Applicable to Employees/Employers p.12

5.2 Taxes Applicable to Businesses p.13

5.3 Available Tax Credits/Incentives p.15

5.4 Tax Consolidation p.16

5.5 Thin Capitalisation Rules and Other Limitations p.16

5.6 Transfer Pricing p.17

5.7 Anti-evasion Rules p.17

6. Competition Law p.17

6.1 Merger Control Notification p.17

6.2 Merger Control Procedure p.18

6.3 Cartels p.19

6.4 Abuse of Dominant Position p.19

7. Intellectual Property p.20

- 7.1 Patents p.20
- 7.2 Trade Marks p.20
- 7.3 Industrial Design p.21
- 7.4 Copyright p.22
- 7.5 Others p.22

8. Data Protection p.22

- 8.1 Applicable Regulations p.22
- 8.2 Geographical Scope p.23
- 8.3 Role and Authority of the Data Protection Agency p.23

9. Looking Forward p.24

- 9.1 Upcoming Legal Reforms p.24

NIGERIA LAW AND PRACTICE

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **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 multidisciplinary backgrounds

and experience. The firm's clients include banks, multinational 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.

Authors



Tiwalola Osazuwa is a partner in **ÆLEX**'s intellectual property, TMT, and mergers and acquisitions practice groups. She has advised several local and multinational companies on

corporate structure, foreign direct investment, regulatory compliance, fintech transactions, and share and asset acquisitions. She has also provided competition advice to several clients and successfully assisted with filings with the Federal Competition and Consumer Protection Commission. She is Vice President of the Executive Committee of the Intellectual Property Law Association of Nigeria and a Group Leader in the Well-Known Marks Committee of the International Trademark Association.



Rebecca Ebokpo is a senior associate in **ÆLEX**'s international trade law, regulatory compliance and corporate/commercial law practice groups. She has

extensive experience advising on FDIs and FPIs in Nigeria. Rebecca also advises clients on immigration formalities, due diligence and corporate restructuring. She is presently representing the firm as a consultant to the Nigerian National Action Committee on the AfCFTA, where she co-ordinates public and private sector stakeholders in the business services sector. Rebecca represents litigants in various courts throughout Nigeria and is a member of the Nigerian Bar Association, the International Bar Association and the Chartered Institute of Arbitrators, UK.

NIGERIA LAW AND PRACTICE

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÆLEX**



Perpetua Onyeukwu is an associate in the tax practice group at **ÆLEX**. She has garnered considerable experience in advising both local and international clients on

doing business in Nigeria, regulatory compliance, and optimal legal and tax structures for commercial transactions, while actively negotiating terms of transaction documents. She has two Master's degrees, one of which specialised in taxation. She is a Chartered Tax Practitioner in Nigeria and a member of the Nigerian Bar Association, the International Fiscal Association and the International Bar Association.



Ifeoluwa Ebiseni is a member of **ÆLEX**'s data protection/TMT, IP and regulatory compliance practice groups. She has significant experience representing and advising clients

on regulatory compliance, corporate financing, investments and funding rounds in the TMT space. She was a key member of the team that drafted the Nigerian Startup Act. As a member of the data protection compliance team, she routinely carries out audits on the data processing activities of companies, advises on the data protection and cybersecurity threats and obligations in relation to cross-border projects, and also facilitates trainings on compliance with Nigeria's data protection laws.



Nenjom Asuk is a member of **ÆLEX**'s TMT and intellectual property practice groups. She advises technology and telecommunications companies on regulatory compliance,

corporate structure, licensing requirements, data protection and intellectual property protection. She has extensive cross-border experience assisting multinational and local companies with a broad range of IP issues including copyrights and trade mark licensing, franchising, patent registrability, trade marks and copyright advisory. She regularly provides legal support to startups during their fund-raising rounds and conducts data protection compliance audits.



Al-Ameen Sulyman is an associate in **ÆLEX**'s corporate and commercial, and mergers and acquisitions practice groups. He regularly advises local and foreign clients on

exchange control issues, regulatory compliance, competition law issues and corporate structure.



Nahimat Yusuf is an associate in **ÆLEX**'s dispute resolution, regulatory compliance and corporate/commercial practice groups. She has worked as part of several teams and has

co-ordinated and planned workshops and stakeholders' engagement sessions where she showcased her ability to navigate complex legal and regulatory landscapes, as well as her dedication to advancing economic growth. Nahimat regularly provides advice to clients and represents litigants in court. She is an Associate of the Nigerian Institute of Chartered Arbitrators (NICArb).

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyma and Nahimat Yusuf, **ÆLEX**

ÆLEX

4th Floor
Marble House
1 Kingsway Road
Falomo, Ikoyi
Lagos
Nigeria

Tel: +234 1 4617321 3
Fax: +234 1 4617321 3
Email: lagos@aelex.com
Web: www.aelex.com



1. Legal System

1.1 Legal System and Judicial Order

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

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, while 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 on 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 FPI or FDI are required to take up shares in an existing company or register a business with a minimum share capital of NGN100 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.

Therefore, every foreign-owned company must be incorporated locally before commencing business in Nigeria except companies which have been granted exemption under the Companies and Allied Matters Act 2020, its preceding legislation, or companies exempted under any treaty to which Nigeria is a party.

Additionally, the Business Facilitation Act 2023 provides for the expansion of the class of for-

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÁLEX**

eign companies exempted from the incorporation requirement to include foreign companies granted an exemption under extant National Assembly Acts.

The Companies and Allied Matters Act 2020 further provides for circumstances where a foreign company can apply to the Minister for Trade for exemption from registration where such foreign company falls under certain categories. These categories are as follows:

- foreign companies invited to Nigeria by or with the approval of the Federal Government to execute any specified individual project;
- foreign companies which are in Nigeria for the execution of specific individual loan projects on behalf of a donor country or international organisation;
- foreign government-owned companies engaged solely in export promotion activities; and
- engineering consultants and technical experts engaged on any individual specialist project under contract with any of the governments in the Federation or any of their agencies or with any other body or person, where such contract has been approved by the Federal Government.

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 paramilitary clothing and accoutrements, 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 (ie, 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.

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÁLEX**

2.2 Procedure and Sanctions in the Event of Non-compliance

Generally, obtaining approvals from 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.

An enterprise with foreign participation must apply to the NIPC for registration before commencing business. However, where an enterprise has commenced business but subsequently secures foreign participation, such enterprise is required to register with the NIPC within three months of such acquisition. Such entity must also ensure that a business permit is obtained from the Ministry of Interior. The process for the registrations with the NIPC and Ministry of Interior involves completing application forms and payment of application fees. Copies of incorporation documents, a tax clearance certificate and other documents will be required for the process. The business registration with the NIPC is usually completed within 48 hours, while the business permit from the Ministry of Interior may take between five and eight weeks (or longer) to process.

It is an offence for a foreign entity to carry on business in Nigeria without incorporating a local company or obtaining exemption. Section 78(2) of the Companies and Allied Matters Act 2020 voids any act of non-compliance with the requirement of registration of a company by a foreign investor. Section 79 of the Companies and Allied Matters Act 2020 also criminalises non-compliance by foreign entities, such that where an unregistered foreign company carries on business without applying for an exemption from registration requirements, that company

and its officers and agents are liable to prosecution and, upon conviction, liable to the payment of a penalty as may be prescribed by the Corporate Affairs Commission in a Regulation. Where the offence is a continuing one, the company and every officer or agent of the company are liable to a further penalty, as the Commission shall specify by Regulation, 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 **Approval of Foreign Investments**), and subject to meeting the requirements for pre and post-incorporation approvals, foreign investments are usually granted permits and approvals by the relevant authorities. There are no known cases of non-authorisation of a legitimate investor.

While the non-authorisation of legitimate investors is uncommon, the Companies and Allied Matters Act 2020 introduces the establishment of the Administrative Proceedings Committee to address grievances arising from the operations of the Act. The inclusion of a provision enabling appeals to the Federal High Court creates an additional layer of recourse. This ensures that in circumstances where legitimate investors who have an interest in any entity registered under the Act are displeased, they possess a means to seek just and fair resolution.

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entity

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.

A single person can form a private company and the membership of a private company shall not exceed 50 persons except for former or current employees of the company. The prescribed minimum issued share capital for a private company is NGN100,000. A public company has a minimum membership of 50 persons and has no maximum limit. The minimum issued share capital of a public company is NGN2 million.

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.

3.2 Incorporation Process

The first step in incorporating a company is to check for the availability of the proposed name and reserve the name. This is typically completed within 24 hours, except where the proposed name is not available. Thereafter, the pre-incorporation form is completed on the company registration portal of the Corporate Affairs Commission (CAC), and relevant documents including resolutions of the proposed shareholders are uploaded. Subsequently, the filing fee and stamp duty are paid; this can be completed in a few hours after which the documents will be approved and the company incorporated. Following this, the certificate of incorporation and

certified true copies of the memorandum and articles of association, along with a status report, can be downloaded from the portal. 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 the CAC's company 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, (i) all private companies are required to file their annual returns at the CAC, and (ii) every person who gains significant control over a company is required to inform the company, which shall then notify the CAC for entry into the register of persons with significant control maintained by the CAC. These requirements also apply to public companies except as they relate to the transfer of shares, since the stocks 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

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÉLEX**

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 following:

- the name of the employer;
- the name and address of the worker and the place and date of their 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;
 - (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,

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÉLEX**

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 14 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 has 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 has 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.

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÁLEX**

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 12-month period; or
- the remuneration is taxed in the country of the non-resident employer, with which Nigeria must have a double tax treaty.

Individual employees are allowed a consolidated relief allowance of 20% of gross income plus either NGN200,000 or 1% of gross income, whichever is higher. 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 tax 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 15 or more 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 Compensation Scheme, which compensates employees (or their dependants) 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.

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÁLEX**

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;
- 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.

The Minister of Finance has issued an order specifying when foreign companies would be deemed to have “significant economic pres-

ence” 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 USD33,700) from the provision of all forms 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 withholding tax of 10%.

The CIT rate is 30%. However, small businesses with a turnover of less than NGN25 million are exempt from paying CIT, while 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 3% on the same tax base as CIT.

Hydrocarbon Tax/Petroleum Profits Tax (PPT)

In addition to the CIT, a hydrocarbon tax (HT) of 15% is payable for operations in onshore and shallow waters pursuant to a Petroleum Prospecting Licence (PPL) and 30% in respect of operations in onshore and shallow waters pursuant to a Petroleum Mining Lease (PML).

Companies that opt not to convert their Oil Prospecting Licence (OPL) or Oil Mining Lease (OML) to a PPL or PML, respectfully, will continue to be taxed under the Petroleum Profits Tax Act (PPTA) until their OPL or OML expires. The petroleum profits tax (PPT) rates vary between 50% and 85%, depending on the nature of the company’s operations. Also, a special PPT rate of 65.75%

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulymun and Nahimat Yusuf, **ÁLEX**

applies when a company has not yet started the sale or bulk disposal of chargeable oil under a programme of continuous production, and all pre-production capitalised costs have not been fully amortised.

Notable Taxes and Levies

The following are notable taxes and levies imposed on companies:

- Information technology tax of 1% of profits before tax is payable by telecommunications companies, internet service providers, pension managers and custodians, and financial institutions 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.
- A National Agency for Science and Engineering Infrastructure (NASENI) levy of 0.25% of profit before tax is payable by companies engaged in banking, mobile telecommunications, ICT, aviation, maritime, and oil and gas with a turnover of NGN100 million and above. The levy, when paid, is tax-deductible for the company's income tax purposes.

Withholding Tax (WHT)

WHT of 10% applies to payment of passive income (interest, dividends, royalties and rents) to a Nigerian company.

WHT of 10% is also payable in respect of passive income payments to a non-Nigerian company including those resident in a country with a

double tax treaty (DTT) in Nigeria (unless where the 10% exceeds the maximum rate in the DTT, in which case the DTT rate will apply).

Payment of technical, managerial, consultancy or professional services attracts WHT of 10%. The WHT is the final tax when paid to 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% and payable to the Federal Inland Revenue Service (FIRS). VAT is collected by the supplier of goods and services excluding oil and gas companies (including oil service companies), ministries, departments and agencies of governments, and select telecommunications companies. These companies are required to pay the VAT on the invoices from their suppliers directly to the FIRS.

Non-resident suppliers of services and intangibles are required to register, collect and remit VAT to the FIRS, while non-resident suppliers of goods will be expected to register, collect and remit VAT from 1 January 2024. Where a non-resident supplier fails to collect the tax, the Nigerian-resident beneficiary is required to self-account for the VAT and remit same to the FIRS.

Capital Gains Tax (CGT)

CGT of 10% is payable on chargeable gains arising from the disposal of all assets, inclusive of digital assets, except the following:

- securities issued by the Nigerian government;
- decorations awarded for valour or gallant conduct;
- life assurance policies;
- chattels sold for NGN1,000 or less;

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulymun and Nahimat Yusuf, **ÁLEX**

- assets acquired by way of a gift which are subsequently disposed of by way of gift;
- investment in superannuation funds, statutory provident funds and retirement benefit schemes;
- assets devolving upon death;
- compensation for loss of office up to NGN10 million;
- securities in a unit trust scheme, provided the proceeds are reinvested;
- gains arising from the acquisition of the shares of a company as the result of a merger, takeover or acquisition, provided that no cash payment is made in respect of the shares acquired;
- gains accruing to local government councils and statutory corporations; and
- gains accruing from the disposal of chargeable assets by ecclesiastical, charitable or educational institutions of a public character, statutory or registered friendly societies and registered co-operative societies and trade unions, provided that such gains do not arise from the disposal of assets acquired in connection with any trade or business, nor from the disposal of an interest possessed by the corporation in a trade or business carried on by some other person, and are applied purely for the purposes of the organisation, institution or society.

Gains arising from the disposal of shares in a Nigerian company for an aggregate sum of NGN100 million or more in any 12 consecutive months are subject to CGT at 10%. However, if the proceeds are utilised to acquire the shares of any Nigerian company in the year of disposal of the shares, CGT is not payable.

Stamp Duty

Stamp duty is paid on instruments (including electronic 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.

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

There is a 20% tax credit for expenditure on research and development, in addition to capital allowance (up to 95% in the first year), in lieu of depreciation. However, a startup licensed by the National Information Technology Development Agency (“labelled startups”) can deduct 100% expenditure on research and development.

Other incentives peculiar to labelled startups are:

- labelled startups are exempted from contributions to the Industrial Training Fund in respect of in-house training provided to its employees for the duration of the startup label;
- investors are entitled to an investment tax credit equivalent to 30% of their investment in labelled startups;
- gains arising from the disposal of the shares of a labelled startup are exempt from CGT provided that the shares have been held for a minimum of 24 months; and

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÉLEX**

- non-resident companies that provide technical, consulting, professional or management services to a labelled startup shall be subjected to a reduced WHT rate of 5% on income derived from such services.

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

Interest on long-term foreign loans with repayment periods above seven years (with a two-year grace period), those with repayment periods between five and seven years (with not less than 18 months' grace period), and those with repayment periods between two and 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. Companies that convert to the fiscal regime of the Petroleum Industry Act will not enjoy the ITA and ITC incentives.

A company engaged in a “pioneer industry” or in the production of a “pioneer product” (as designated by the government of the day) may apply for “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

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÁLEX**

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 the undistributed profits of a Nigerian company where that company is controlled by five persons or fewer.

6. Competition Law

6.1 Merger Control Notification

The following Nigerian legislation regulates competition and merger notification in Nigeria:

- the Federal Competition and Consumer Protection Act 2018 (FCCPA);
- the Merger Review Regulations 2020;
- the Merger Review (Amended) Regulations 2021;
- the Merger Review Guidelines 2020;
- the Notice of Threshold for Merger Notification 2019;
- the Notice in respect of Indicative Timeframes for Merger Notification and Review Process 2020;
- the Guidelines on Simplified Process for Foreign-to-Foreign Mergers with Nigerian Component, 2019; and

- the Federal Competition and Consumer Protection Commission (Administrative Penalties) Regulations, 2020.

Pursuant to the FCCPA, any merger or acquisition that results in a change of control of a business in Nigeria and meets the notification threshold, will come under the 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;
- an amalgamation or other combination; or
- a joint venture.

Under the FCCPA, an undertaking is deemed to have control over the business of another if:

- it beneficially owns more than half of the issued share capital or assets of the undertaking;
- it is entitled to cast a majority vote or can control the voting of a majority at a general meeting;

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÁLEX**

- it can appoint or veto the appointment of a majority of the directors;
- it is a holding company and the undertaking is its subsidiary; and
- it has the ability to materially influence the policy of an undertaking.

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 (circa USD2.24 million); or
- the annual turnover of the target undertaking in, into or from Nigeria equals or exceeds NGN500 million (circa USD1 million).

A merger with an annual turnover below the stipulated threshold constitutes a small merger and those above the threshold constitute large mergers.

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.

Failure to obtain the approval of the FCCPC prior to the implementation of a notifiable merger could result in the parties being liable upon conviction to pay a fine not exceeding 10% of their turnover in the business year preceding the date

of the offence. The FCCPC also has the power to invalidate or void the merger.

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 requirements 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.

With regard to 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 by 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.

For eligible transactions, the FCCPC may permit parties to apply under an expedited procedure which will reduce the applicable timelines by up to 40%.

The Merger Review Regulations 2020 provide for a two-stage review of a merger. In the first phase, the FCCPC's assessment will focus on whether

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÉLEX**

the transaction is likely to substantially prevent or lessen competition. If it is likely to, the parties will be allowed to offer remedies for competition concerns that are of a remediable nature. Upon completion of its review, the FCCPC will either approve the transaction unconditionally or subject to accepted remedies or, if the transaction still raises competition concerns, the FCCPC will proceed to undertake a second detailed review of the merger.

In the second detailed review, the FCCPC will consider whether there are any factors that are sufficient to offset its competition concerns, eg, technological efficiencies or other pro-competitive gains, or public interest grounds. If the FCCPC makes a positive determination on either ground, it will approve the transaction subject to conditions which it deems appropriate; otherwise, the transaction will be refused.

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, unless such agreement has been 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. The FCCPA also 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.

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 the abuse of a dominant position by one or more undertakings in a market. This occurs where the undertakings charge an excessive price to the detriment of consumers, refuse to give a competitor access to an essential facility where it is economically feasible, engage in an exclusionary act such as refusing to supply scarce goods to a competitor, or sell goods or services below their marginal or average cost unless the technological efficiency and other pro-competitive gains outweigh the anti-competitive effects of its act. Exclusive dealing arrangements or market restrictions between affiliated undertakings will not be considered as an abuse of a dominant position.

The dominant position of an undertaking is determined by its ability to act without considering the reaction of its customers, consumers or competitors. In a dominant position, the undertaking enjoys a position of economic strength

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulymun and Nahimat Yusuf, **ÁLEX**

which prevents effective competition in the relevant market.

However, where an undertaking seeks to contribute to improving production or distribution of goods or services or promoting technological or economic progress that will benefit the consumers, it will not be treated as an abuse of a dominant position. The FCCPA directs that where the FCCPC finds that an undertaking has abused a dominant position, the Commission is authorised to prepare a report indicating the abusive practices, notify the undertakings of its findings and direct the undertakings to cease the abusive practices. The undertaking is also liable upon conviction to a fine of not less than 10% of its turnover in the preceding business year or a higher percentage, as the court may determine.

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 it 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 pro-

cesses 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 they are the true inventor. The true inventor must, however, be named in the patent, even if they are 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 their invention. The patentee's rights under a patent, however, extend only to acts done for industrial or commercial purposes. A patentee whose rights have been infringed may institute a civil action against the infringer and claim reliefs such as damages, an injunction and an account of profits.

7.2 Trade Marks

A trade mark 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,

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulymun and Nahimat Yusuf, **ÁLEX**

or the commonly used and accepted names of chemical substances cannot be registered as trade marks 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 trade mark is to be made to the Registrar of Trade Marks and must contain the specification of goods or services in relation to which the trade mark is to be used. It is not acceptable to simply make a statement that the application is to cover all the goods or 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 trade mark application (eg, temporary number, date of application, the trade mark). The Registrar, thereafter, examines the trade mark for distinctiveness, similarity with existing registered trade marks and general compliance with the requirements of the law.

Where the Registrar is satisfied, it 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 trade mark 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 trade mark 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 trade mark in respect of any goods or services gives that person the exclusive right to the use of that trade mark in relation to those goods or services. A proprietor whose trade mark rights have been infringed may institute a civil action against the infringer and claim reliefs such as damages, an injunction and an 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.

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÉLEX**

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, an injunction and an account of profits.

7.4 Copyright

Under Nigerian law, musical, literary and artistic works, audiovisual works, 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 audiovisual works 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, an injunction and an 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 primary law regulating data protection is the Nigeria Data Protection Act 2023 (DPA). The Data Protection Bill was signed into law in June 2023, thereby making the DPA the first law on data protection in Nigeria. It provides a legal framework for the protection of personal information and establishes the Nigeria Data Protection Commission (NDPC) for the regulation of the processing of personal information.

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyma and Nahimat Yusuf, **ÉLEX**

The DPA contains transitional provisions which preserve regulations, orders, rules and other documents issued by the National Information Technology Development Agency and the defunct Nigeria Data Protection Bureau until repealed, amended, replaced or altered.

As such, other applicable regulations on data protection in Nigeria include:

- the Nigeria Data Protection Regulations 2019 (the erstwhile primary regulation on data protection);
- the Nigeria Data Protection Regulations Implementation Framework 2019;
- the Guideline for Management of Personal Data by Public Institutions in Nigeria 2020; and
- such other guidelines and documents made in furtherance of the above-listed.

It is important to note that in instances of conflict between the DPA and any of the pre-existing regulations, the provisions of the DPA will override those of such regulations.

8.2 Geographical Scope

The DPA is applicable to the processing of data, whether by automated means or not, where:

- the data controller or processor is domiciled in, resident in, or operating in Nigeria;
- processing of personal data occurs within Nigeria; or
- the data controller or processor is not domiciled in, resident in, or operating in Nigeria, but is processing the personal data of a data subject in Nigeria.

8.3 Role and Authority of the Data Protection Agency

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

The NDPC was established by the DPA and is charged with the responsibility of overseeing the implementation of the provisions of the DPA. The NDPC's role also includes:

- the regulation of the deployment of technical and organisational measures to enhance personal data protection;
- fostering the development of personal data protection technologies, in accordance with recognised international best practices and applicable internal law;
- where necessary, accreditation, licensing and registration of suitable persons to provide data protection compliance services;
- promotion of public awareness on the obligations of data controllers and processors under the DPA; and
- receiving complaints relating to violations of the DPA or subsidiary legislation made under the DPA.

The NDPC is also empowered by the DPA to:

- prescribe fees payable by data controllers and processors in accordance with data processing activities;
- issue regulations, rules, directives and guidance under the DPA;
- prescribe the manner and frequency of filing and content of compliance returns by data controllers and data processors of major importance to the NDPC;
- call for information from a person, or inspect any documents with respect to anything done under the DPA;

Contributed by: Tiwalola Osazuwa, Rebecca Ebokpo, Perpetua Onyeukwu, Ifeoluwa Ebiseni, Nenjom Asuk, Al-Ameen Sulyman and Nahimat Yusuf, **ÁLEX**

- conduct investigations into any violation of a requirement under the DPA or subsidiary legislation made under the DPA by a data controller or a data processor; and
- impose penalties in respect of any violation of the provisions of the DPA or any subsidiary legislation made under the DPA.

ness climate for investors and participants in the market.

9. Looking Forward

9.1 Upcoming Legal Reforms

With the conclusion of the Nigerian general elections and the start of a new administration, we can expect a few major reforms tackling the current difficulties in the Nigerian economy during the course of the year. It is hoped that the reforms will provide clarity and improve the busi-

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com