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# ESG 2023

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## **Nigeria: Law & Practice**

Abisola Odeinde, Wonuola Abioye, Abasi-Akara Edet,  
Abubakar Galadanci and Zion Odinaka  
Olaniwun Ajayi LP



# NIGERIA



## Law and Practice

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### **Olaniwun Ajayi LP**

**Olaniwun Ajayi LP** is one of the largest law practices in sub-Saharan Africa, with over six decades of exemplary and demonstrable capability in all fields of legal practice. Currently, the firm has 22 partners and is complemented by a team of over 100 lawyers qualified to practice across Nigeria, England and Wales, New York, and Zambia. The firm has its offices in Lagos, Abuja, Port Harcourt, London and Cameroon. Its ESG practice team is made up of three partners, one managing associate, one senior

associate and five associates. The ESG team provides advice to clients on ESG-related financial products such as sustainability-linked financing and green bonds, all aspects of green infrastructure project development and financing and assisting clients with disclosure requirements, policy formulation and representing clients on ESG-related litigation with clientele including the Climate Finance and Investment Accelerator under the UK BEIS Department.

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# NIGERIA LAW AND PRACTICE

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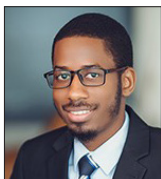
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## Environmental Trends in Perspective

Environmental, social and governance (ESG) factors have become increasingly important in the Nigerian business landscape, influencing how enterprises assess risks and opportunities, build resilience, increase productivity and gain stakeholders' and investors' trust. Particularly, environmental sustainability continues to drive corporate governance conversations amongst Nigerian enterprises, especially considering Nigeria's classification amongst the ten most vulnerable countries to the adverse impacts of climate change by the World Climate Change Vulnerability Index and recent ranking as 168 of 180 countries in the Environment Performance Index 2022.

Beyond voluntary corporate action, regulatory trends have evolved, obligating corporate enterprises to address environmental degradation concerns and take active steps towards carbon emissions reduction and climate change mitigation and adaptation actions.

Indicative of this regulatory effort, the Companies and Allied Matters Act 2020, the primary law regulating companies in Nigeria, requires board-level mindfulness of the environmental impact of companies' operations. Also, the passage of the Climate Change Act (CCA) 2021 and the Petroleum Industry Act (PIA) 2021 introduced notable environmental and sustainability obligations on enterprises towards Nigeria's energy transition drive. Beyond the CCA and PIA, the Energy Transition Plan (ETP) 2022 was created as a strategic blueprint and roadmap towards attaining net-zero emissions by 2060. Accordingly, we examine these legislative and policy initiatives below.

## The Climate Change Act

Reputed for being the first national legislation on climate change in West Africa, the CCA essentially integrates climate change mitigation and adaptation into the national plans of Nigeria. Notably, the CCA was passed shortly after the United Nations Climate Change Conference of the Parties 2021 (COP26), where like other participating countries, Nigeria renewed its commitments towards achieving carbon neutrality by 2050 and contributing to keeping global warming below 1.5°C. The CCA also comes on the back of Nigeria's submission of its updated Nationally Determined Contribution (NDC) 2021 as part of its commitment under the Paris Agreement. The CCA creates new obligations for private and public entities, as well as ministries, departments and agencies of the Federal Government of Nigeria (MDAs) and stipulates key provisions compelling entities to take corporate action towards achieving carbon neutrality. Some of the obligations created under the CCA are discussed below.

### *Obligations on private entities*

Private entities, including companies, partnerships, and other forms of business organisations, with employee capacity exceeding 50 employees are required to comply with the following obligations:

### *Corporate emission-reduction measures*

Private entities are now obligated to put measures in place towards achieving annual carbon emission reduction targets in accordance with the National Climate Change Action Plan (the "Climate Action Plan"). The Climate Action Plan, which is to be prepared by the Secretariat of the National Council on Climate Change (the "NatCCC") in consultation with the Federal Ministry of Environment and the Federal Ministry of Finance, Budget, and National Planning, will

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stipulate measures necessary to mitigate and adapt to climate change, and serve as a road map for addressing environmental challenges.

### *Designation of a climate change officer*

Further, private entities are required to designate a climate change officer or environmental sustainability officer, who will be required to submit annual reports of such entity's carbon emission reduction efforts and climate adaptation plan to the Secretariat of the NatCCC.

### *Report on performance of climate change obligations*

Other than submission of annual reports by a private entity, in any case where the NatCCC requires it through a notice in a federal gazette, a private entity will also be required to prepare reports on the status of its performance of climate change obligations for periods in which such report is required.

### *Fines and regulatory directive for non-compliance*

Under the CCA a private entity that flouts its climate change mitigation and adaptation obligations exposes itself to the risk of fines and charges, which will ultimately be paid into the Climate Change Fund. Also, the National Climate Change Council may require such private entity to prepare a report on its past, current and future actions to be taken to secure the performance of its climate change obligations.

### *Obligations on MDAs*

Further, under the CCA, all MDAs are required to:

- establish a climate change desk to be supervised by a climate change desk officer responsible for ensuring the integration of climate change activities into MDA's core mandate;

- ensure through its climate change desk officer, that there is adequate planning and budgeting for all climate change programmes, projects and activities; and
- ensure strict adherence to annual carbon emission reduction targets in line with the Climate Action Plan and the carbon budget.

In any case where an MDA's evaluation report discloses unsatisfactory performance in respect of compliance with climate change obligations, this will necessitate investigation of such MDA by the NatCCC Secretariat, and possible recommendation of sanctions and appropriate measures against such MDA.

### *Obligations on public entities*

Beyond private entities and MDAs, the CCA further vests the NatCCC with the power to impose climate change obligations on public entities. Public entities under the CCA refer to organisations or bodies that provide services to the public on behalf of the Nigerian government. The CCA provides for the inclusion in the Climate Action Plan of proposed incentives for both private and public entities to achieve greenhouse gas (GHG) emission reduction to encourage the decarbonisation efforts for Nigeria.

### *The Petroleum Industry Act 2021*

The PIA was enacted on 16 August 2021 and is the primary legislation regulating the Nigeria's petroleum industry. Notably, the PIA provides for a range of environmental responsibilities for licensees and lessees operating across the petroleum industry's upstream, midstream and downstream sectors. Below, we provide an overview of some of these environmental obligations.

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## *Submission of an environmental management plan*

Petroleum licensees carrying out either upstream or midstream petroleum operations are required to submit an environmental management plan in respect of any project requiring an environmental impact assessment to the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) or Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA), as the case may be.

## *Contribution to the environmental fund*

As a pre-condition for grant of licence, prospective licensees are required to make a prescribed financial contribution to an environmental remediation fund established by the NUPRC or NMDPRA for the rehabilitation and management of the adverse environmental impacts associated with such licence.

## *Anti-gas-flaring obligations*

Petroleum licensees are to desist from flaring gas, except in the cases of emergency, where there is an exemption granted by NUPRC, or where such gas flaring is permissible under established regulations. Licensees in breach of these anti-gas-flaring provisions can attract fines as specified by the NUPRC.

## *Prioritisation of environmental sustainability in operations*

A core tenet of the PIA revolves around the imperative for petroleum industry operators to prioritise environmental sustainability throughout their operations. Gas processing, bulk gas storage, and gas transportation pipeline licensees, for instance, are required to design, operate and maintain their facilities in a manner that ensures both safety and environmental sustainability. Similarly, entities involved in retail gas supply, gas distribution, wholesale petroleum liquids

supply, and petroleum product distribution, are mandated to adhere to environmental, health and safety regulations set forth in the PIA.

## *Abandonment, decommissioning and disposal obligations*

Beyond environmental obligations during active petroleum industry operations, the PIA outlines specific requirements for the abandonment, decommissioning, and disposal of petroleum assets. Petroleum licensees intending to decommission and abandon wells, installations, structures, utilities and pipelines must follow industry best practices and guidelines issued by the NUPRC or NMDPRA. Prior to commencing decommissioning and abandonment, licensees will be required to submit a decommissioning and abandonment programme setting out the method to be employed in line with good international petroleum practices and environmental development. Such decommissioning and abandonment programme must also indicate an assessment of the environmental and social impact of the proposed decommissioning and abandonment.

## *The Energy Transition Plan 2022*

On 2 February 2022, the Federal Executive Council of the Federal Republic Nigeria (FEC) gave its approval of the ETP. The ETP has been described as a home-grown, data-backed, multi-pronged strategy developed for the achievement of net-zero emissions in terms of the Nigeria's energy consumption. The ETP outlines a set of crucial strategies and timelines for reducing emissions across five key sectors: oil and gas, power, transport, cooking, and industry.

## *Oil and gas sector*

Recognising that the Nigerian oil and gas sector accounts for 11% of in-scope emissions, primarily from upstream energy activities, gas flar-

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ing and fugitive emissions, the ETP sets ambitious emissions reduction targets. The ETP aims for a 100% reduction in gas flaring by 2030 and a 95% reduction in fugitive emissions by 2060. This will be achieved through the adoption of cutting-edge technologies like Carbon Capture and Storage (CCS), direct air capture, and the use of sustainable energy sources such as hydrogen fuel.

### *Power sector*

The power sector, which is responsible for 27% of emissions in Nigeria, mainly from off-grid diesel/petrol generators and on-grid gas combustion, is a key focus of the ETP. By 2030, the ETP seeks to ensure universal access to electricity by replacing emission-heavy diesel generators with 6.3GW of off-grid and 42GW of on-grid capacity. Further, the ETP aims for the power sector to achieve net-zero emissions by 2060, driven by the installation of 250GW of solar photovoltaic (PV) systems and the deployment of 112GW of energy storage.

### *Transport*

Accounting for 24% of emissions in Nigeria, the transport sector is targeted for emissions reduction through the adoption of low-emission transport technologies and a shift away from gasoline/diesel and hybrid vehicles toward electric buses and two-three wheelers. The ETP envisions applying a 10% and 30% biofuel blend rate by 2030 and 2036, respectively. It further aims for a 60% electric vehicle market share by 2050 and, ultimately, a complete transition to 100% electric vehicles by 2060. Notably, the FEC on 10 May 2023 approved the National Automotive Industry Development Plan 2023, which provides fiscal incentives for assemblers and consumers of electric vehicles. These include tax holidays for electric vehicle assemblers and cab and courier companies that utilise electric vehicles.

### *Cooking*

Cooking, in all its forms – rural, urban and commercial – contributes to 22% of in-scope emissions in Nigeria, primarily due to the use of traditional fuels like firewood, charcoal and kerosene. To decarbonise the cooking sector, the ETP proposes a shift to liquefied petroleum gas (LPG) until 2030. Post-2030, the ETP prioritises the deployment of electric or biogas cookstoves, with the goal of achieving 100% utilisation of electric or biogas stoves by 2060.

### *Industry*

The industrial sector, responsible for 16% of emissions, particularly through activities such as cement and ammonia production, is addressed in the ETP's decarbonisation strategy. The ETP's strategy involves prioritising bioenergy with carbon capture and storage (BECCS) for cement production and replacing grey hydrogen with green and blue hydrogen in ammonia production. The ETP anticipates a 33% increase in blue hydrogen deployment in cement production by 2030, rising to 50% by 2050 and reaching 100% by 2060. Concurrently, it projects a corresponding reduction in the utilisation of clinker in cement production – 20% by 2030, 50% by 2050, and 100% by 2060.

Overall, the ETP serves as a reliable guide to steer Nigeria toward a sustainable, low-emission energy future, with each sector's targets playing a vital role in achieving its ambitious goal.

### *Risks and Opportunities*

From an ESG perspective, the recent wave of environmental regulatory changes presents a plethora of possibilities and challenges for enterprises, both private and public. Businesses keen on enhancing their ESG ratings and appealing to investors and other key stakeholders can capi-

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talise on the opportunities stemming from the CCA, PIA and the ETP.

It is imperative for companies to measure their environmental impact initiatives against the national standards set by the CCA. We are witnessing a positive trend with some firms establishing climate impact desks, committing to increased environmental transparency, and expanding sustainability reporting efforts. This proactive approach becomes even more critical as investor and public perception expectations continue to rise in these areas. Conversely, enterprises that neglect these obligations created by the CCA run the risk of receiving lower ESG ratings and facing the financial burden of regulatory fines due to non-compliance.

Similarly, the PIA introduces distinctive prospects and hazards for companies operating with licences or leases in Nigeria's petroleum industry. Following the PIA, regulations like the Gas Flaring, Venting, and Methane Emissions (Prevention of Waste and Methane Emissions) Regulations 2023 and the Midstream Gas Flare Regulations 2023 (Midstream Regulations) have been enacted. The Regulations offer companies seeking ESG improvements the chance to acquire permits from the NUPRC and the NMD-PRA for accessing flare gas for commercial use. Conversely, enterprises that engage in unauthorised gas flaring, outside the bounds of the PIA, may find themselves subject to regulatory fines.

Likewise, the ETP presents a plethora of ethical investment opportunities for businesses striving to increase their ESG ratings and gain stakeholder confidence. Enterprises can channel investments into renewable energy endeavours, such as solar and wind power projects. Not only do these initiatives promise substantial returns,

but they also contribute to reduced carbon emissions, thereby enhancing ESG ratings.

## Challenges

### *Perception of climate change issues*

Central to discussions surrounding environmental sustainability is the question of how businesses in Nigeria, and indeed across Africa, perceive the reality of climate change. Moreover, there are pressing concerns about whether African enterprises should shoulder the responsibility for climate change action, particularly when Africa contributes a mere 4% of global carbon emissions. Consequently, despite the passage of significant environmental regulatory measures such as the CCA, PIA and others, gas flaring increased by 10% to 138.7 million metric standard cubic feet (scf) between January and June 2023, up from 126.1 million scf during the same period in 2022. Additionally, there is a slow adoption of investing in carbon emission reduction initiatives by Nigerian companies, particularly those in the industrial sector.

Conversely, sustained efforts on social and governance initiatives by Nigerian enterprises in their ESG drive further strengthens the narrative that many corporate organisations simply do not consider climate change or environmental concerns as threatening yet, or at least not demanding equivalent attention. An analysis of sustainability reports from major commercial banks, for instance, reveals a greater focus on community investments than on GHG emissions disclosures or environmental concerns. Nonetheless, it is anticipated that increasing pressure, especially from international investors and public stakeholders, will prompt a more balanced approach across the entire ESG spectrum.

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## *Greenwashing risks*

Greenwashing refers to the practice of false representation by an organisation that its activities, products or services are environmentally friendly or have substantially lesser environmental impact than they do. Indeed, in Nigeria, greenwashing is a real issue constituted by enterprises seeking to falsely boost their ESG ratings, such as where companies falsely claim that their product offerings contribute to environmental sustainability when the reverse is the case. Notably, from a regulatory perspective, Nigeria lacks specific greenwashing legislation; however, existing consumer protection and advertising provisions under the Federal Competition and Consumer Protection Act (FCCPA) and other legislation may offer some recourse against such deceptive practices.

## *Bridging the implementation gap*

The recently passed environmental laws and policies must be complemented by effective implementation. While some enterprises have voluntarily established sustainability initiatives, made environmental disclosures, and taken climate-related actions, regulators must make corresponding efforts to ensure the enforcement of this environmental legislation. For instance, despite the CCA's requirement to issue the Climate Action Plan within 12 months of its commencement, there is no indication that this has been issued yet. Consequently, companies currently lack a benchmark to assess their climate change measures against national standards. Therefore, going forward, intensified implementation efforts are necessary to compel organisations to integrate climate actions into their corporate decision-making processes, and maximise the opportunities presented by these laws.

## **Conclusion**

In conclusion, the evolving landscape of environmental regulations in Nigeria, as exemplified by the CCA, the PIA and the ETP, presents both significant opportunities and challenges for enterprises. These legislative initiatives offer a framework for improving ESG performance, enhancing stakeholder relationships, and attracting responsible investments. However, the perception of climate change as a non-pressing issue among Nigerian enterprises remains a challenge, and the risk of greenwashing practices persists. Effective implementation of these environmental legislative and policy initiatives is crucial to bridge the gap between regulatory requirements and corporate action, ultimately leading to meeting all commitments Nigeria has made to contribute to the overarching goals under the Paris Agreement. Also, as Nigeria strives to address its environmental challenges and move towards carbon neutrality, the proactive action of governmental, private and public organisations is not just a legal obligation but an ethical imperative for safeguarding our environment and securing a sustainable future.

## What is ESG Investing?

Environmental, social, and governance investing (“ESG investing”) is gaining prominence and is experiencing notable growth and development in Nigeria with increased awareness of sustainability and climate-related objectives. This transformation aligns with the global shift towards a net-zero emissions exemplified around the globe by commitments to the historic Paris Climate Accord established during the UN Climate Change Conference (COP21) held in 2015.

ESG investing is a diverse investment strategy that goes beyond financial returns to also encompass “social returns”. Essentially, this means gaining financial returns while also positively contributing to the society. ESG investing typically involves evaluating a company’s performance in environmental responsibility, social impact and governance practices in investment-making decisions, such as the impact of the company’s actions on the environment, waste management processes, supply chain management, extent of utilisation of natural resources such as water and raw materials, carbon emissions and environmental mitigation actions, amongst others. Additionally, when assessing a company’s performance on social aspects of the ESG framework, factors to consider would be labour ethics, community engagement initiatives, workplace diversity and inclusion, amongst others. Conversely, for governance, key issues to consider include the level of transparency and disclosures in reporting ESG-related information, board diversity, independence of the board, fair remuneration of executives and the ethical culture of the organisation.

## Types of ESG Investing in Nigeria

Whilst ESG investing encompasses diverse strategies and approaches, the central tenet of ESG investing is the promotion of sustainability

and ethical practices. Below are a few types of ESG investing which are gaining momentum in Nigeria.

### *Sustainability-themed investment*

Sustainability-themed investment is an approach in terms of which investors invest in companies or projects that align with their chosen themes to promote environmental sustainability and development. These investors focus on companies with strong ESG performance in line with their ethical, social and environmental values. These themes include carbon emissions reduction, renewable energy, gender equality and waste management. We have witnessed an increase in investments in renewable energy projects by climate funds with the specific mandate to invest only in green energy power projects.

### *Positive and negative screening*

Positive screening, often referred to as “best in class” investment, simply entails investing in companies with high ESG performance in comparison with their counterparts within a specific sector. Key factors taken into consideration include labour practices, gender equality, good governance and diversity. Negative screening, on the other hand, as the name implies, involves excluding companies that do not meet specific ESG criteria. Investors may also exclude companies that are deemed unacceptable by them based on certain criteria. The criteria used for negative screening may vary. However, common examples include companies involved in tobacco, weapons and fossil fuels production. We have seen both positive and negative screening by investors in Nigeria increase alongside the increase by green and climate funds’ investments in the renewable energy space and their specific exclusion of investing in companies which utilise coal for power production and even natural gas which, viewed as a transition fuel,

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is in some instances a permissible investment option by some investors.

### *Impact investing*

The Global Impact Investing Network (GIIN) defines impact investments as “investments made with the intention to generate positive, measurable, social and environmental impact alongside a financial return”. Impact investments can be made in both emerging and developed markets, and target a range of returns from below market-to-market rate, depending on investors’ strategic goals. Impact investors can be said to focus more on intent and less on financial returns.

Notably, impact investment in Nigeria is gaining momentum, with the establishment of the Nigerian National Advisory Board for Impact Investing (NABII) dedicated to fostering a conducive environment for impact investment. NABII was recently inducted into the Global Steering Group for Impact Investment (GSG), a UK-based organisation dedicated to promoting impact investments for societal and environmental benefit.

### *ESG bonds*

An ESG bond is a type of debt security used to raise capital to fund projects with ESG-related objectives. ESG bonds are also used to pursue environmental, sustainability and social purposes such as the reduction of carbon emissions, the increase of energy efficiency, enhancement of healthcare and of workers’ conditions in terms of safety, inclusion, diversity, etc. Investments in ESG bonds enable investors to support and contribute to sustainability-driven initiatives.

### *Carbon offsetting investments*

Carbon offsetting investment refers to the practice of investing in projects that actively reduce or remove carbon emissions from the environ-

ment. Such offsetting projects include projects such as reforestation, afforestation, methane gas capture and renewable energy projects. Emissions reductions from offsetting projects are first verified for accuracy by a third party, after which they are translated into carbon credits or a unit which represents a certain volume of emissions reductions. Organisations that exceed set government emissions limits (where they exist), or which desire to offset their carbon emissions can purchase the carbon credits to offset their carbon emissions. The funds received from the sale of these units provide an incentive for the reduction of emissions and the development of carbon offsetting projects. The nascent development of the IREC (International Renewable Energy Certificates) market is a notable example of the increase of this form of ESG investing in Nigeria.

### *What is Driving ESG Investment in Nigeria?*

Nigeria, being the largest economy in Africa with a GDP of about USD477 billion and a rapidly growing young population is an ideal place for sustainable investments. Given the increased focus on ESG investing globally and within the financial sector, it is imperative to understand the legal, regulatory and commercial drivers of ESG investment in Nigeria.

### *SEC Guidelines on Sustainable Financial Principles for the Capital Market*

The capital market plays a substantial role in the mobilisation of funds for capital allocation and economic growth and development in Nigeria. However, the pursuit of economic endeavours and industrialisation funded via the capital market has profound impact on the environment. In a bid to encourage ESG investment in Nigeria, the Securities and Exchange Commission (SEC), which is the apex regulatory body of the capital market in Nigeria, approved the Guidelines on

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Sustainable Financial Principles for the Nigerian Capital Market in April 2021, (the “SEC Guidelines”) with the objectives to:

- stimulate a resilient, competitive and sustainable capital market that promotes economic development and improves the quality of life for all;
- improve corporate governance practices to ensure that the participants in the capital market operate in a transparent and sustainable manner;
- nurture an environment that facilitates job creation and diversity, women empowerment, human rights protection, access to affordable capital market products by the economically less privileged; and
- contribute to efforts aimed at reducing global warming and other environmental footprints.

The SEC Guidelines set out principles around embedding ESG considerations in decision-making by Capital Market Operators (CMOs), Trade Groups, Self-Regulated Organisations (SROs) and Capital Trade Points (Regulated Entities). The principles include considerations on human rights, women’s economic empowerment, reporting and disclosures, amongst other things. Further, the SEC Guidelines require Regulated Entities to regularly report the extent to which they apply the principles as a best practices benchmark. Regulated Entities are also required to report on their sustainability practices in a manner that reflects their commitment and level of implementation which may form the basis for stakeholders’ informed decision-making.

Notably, the SEC Guidelines are principle-based and therefore do not prescribe specific implementation requirements. However, Regulated Entities are required to apply the principles in line

with their values, mandates and risk management frameworks. The SEC Guidelines act as a benchmark for ESG practices which Regulated Entities must target and it is hoped that this will raise awareness and encourage the adoption of sustainable finance, helping the transition to a greener economy.

### *SEC Social Bond Rules*

In October 2021, the SEC issued the New Rules on Social Bonds (the “Social Bonds Rules”) which, among other things, provide the definition of social bonds and projects, prescribe the projects eligible for social bonds, the conditions of approval and how proceeds from the issuance of the bonds should be utilised.

The Social Bonds Rules define a social bond to mean “a type of debt instrument, where the proceeds would be exclusively applied to finance or refinance new and/or existing eligible projects with clear and identifiable social objective(s) and which are dedicated to a target population”.

### *Projects eligible for social bonds in Nigeria*

Projects eligible for classification as social bonds have a direct focus on tackling or alleviating social issues, with the ultimate goal of achieving positive social outcomes. They include projects focused on:

- access to basic infrastructure and services;
- affordable housing;
- job creation;
- food security;
- socioeconomic development; and
- any other social project as may be approved by the SEC from time to time.

Notably, the Social Bonds Rules prescribe the target populations that the projects may be dedicated to, including people living below the pov-

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erty line, vulnerable groups, the disabled, and undereducated people, amongst others.

### *Utilisation of proceeds*

Besides specifying eligible projects, the Social Bonds Rules further prescribe how the proceeds should be utilised. In doing so, the Social Bonds Rules place an obligation on the trustees to ensure that the net proceeds are invested in social projects and the issuer uses the proceeds in the social project within the timeframe prescribed in the prospectus. Unallocated proceeds are to be invested by the trustees in money market instruments with investment grade rating that may include projects which are consistent with the delivery of positive social outcomes especially, but not exclusively, for a target population.

### *SEC Green Bond Rules*

The SEC approved the Green Bonds Rules in October 2018. The Green Bonds Rules, just like the Social Bonds Rules, define “green bond” as “any type of debt instrument, the proceeds of which would be exclusively applied to finance or refinance in part or in full new and/or existing projects that have positive environmental impact”. Further, the Green Bonds Rules provide conditions for the approval of a green bond and how proceeds from the issuance of green bonds should be utilised, and prescribe reporting requirements for green bonds.

### *Nigeria Stock Exchange (NSE) or Sustainability Disclosure Guidelines*

In a significant move in 2018, the SEC approved the NSE Sustainability Disclosure Guidelines (the “NSE Guidelines”) for publicly listed companies. These guidelines apply to Regulated Entities and provide a structured framework for integrating fundamental principles into organisations. This includes a step-by-step approach and recommended indicators for annual disclosure to the

Nigeria Exchange Group (NGX), formerly known as the NSE. The NSE Guidelines also recognise the potential challenges in preparing sustainability reports and encourage companies to implement their recommendations considering their available resources and expertise.

### *Adoption of green bonds*

In 2016, the NGX, in demonstration of Nigeria’s commitment to the reduction of greenhouse gas emissions, and as part of its initiatives to improve the sustainability of the environment, introduced the Green Bond Product Paper, a ground-breaking initiative that garnered strong support and collaboration from key stakeholders, including the Federal Ministry of Environment, Federal Ministry of Finance, and the Debt Management Office (DMO). This effort led to the issuance of the Series I Sovereign Green Bond to the tune of NGN10.69 billion in 2017, making Nigeria the first African country to issue Sovereign Green Bonds. Notably, the proceeds of the Series I Sovereign Green Bond were invested in projects which include renewable energy projects, afforestation programmes, provision of off-grid independent power plants to rural communities, etc.

Subsequently, Series II NGN15 billion Green Bonds were issued by the Federal Government in 2019 and, following the successful issuance, there has been anticipation regarding a new green bond to finance the 2023 budget deficit, as announced by the DMO in 2022. Despite the DMO’s impressive achievement of raising NGN4.46 trillion from the bond market within the first eight months of 2023, the issuance of the green bond is still pending. Nonetheless, the deliberate approach suggests a positive intention, which is likely to boost investor confidence and further promote ESG investing.

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## *The Nigerian Sustainable Banking Principles (NSPB)*

The Central Bank of Nigeria (CBN), being the apex regulatory authority overseeing all banks and financial institutions in Nigeria, introduced the NSBP Guidelines in September 2012. The Guidelines directed the full adoption and implementation of the principles and guidelines by all banks, discount houses and Development Finance Institutions (DFI) to develop a management approach that balances the environmental and social risks identified with the opportunities to be exploited through their business activities. The CBN also requires banks, discount houses and DFIs to submit regular reports to it in line with reporting requirements to be made available to the industry. This is to enable the CBN to track the progress of the implementation and adherence to the principles and guidelines.

## *Increased trading of IRECs in Nigeria*

IRECs are tradeable, market-based instruments that represent the legal property rights to the sustainability or environmental attributes of renewable electricity generation. IRECs evolved on the premise that an underlying positive environmental attribute is attached to every one megawatt hour (1 MWh) of renewable energy generated and used. In essence, two commodities are created when renewable energy is generated: first, the electricity generated from a renewable energy source such as a solar installation; and second, the environmental attributes.

Many organisations, institutions and governments often lay claim to the amount of renewable energy consumed or used during their operations and IRECs serve to validate, quantify and substantiate those claims. Thus, IRECs work to concretise the environmental attributes of all renewable energy consumed into intangible blocks or units of 1 MWh for which a certificate

is issued and can be sold in the open market as an energy commodity to earn income. For each MWh of renewable energy produced and sent into the grid or consumed off the grid, an IREC is created.

Pursuant to our registration with the IREC Standard, the global registry through which energy products from renewable sources can be certified, and our role as market participant in the Nigerian IREC market, we are aware that there is an annual demand for more than 20 MW of IRECs from Nigeria, hence, there is a ready market for the sale of every IRECs generated in Nigeria and such demand will contribute significantly to investments in renewable energy projects.

## *Corporate ESG initiatives*

Nigerian companies seem to be imbibing responsible and sustainable business practices in line with global trends, and they have come to accept that their actions have far-reaching consequences on the environment, making sustainability not just an option, but an obligation. As a result, many Nigerian business enterprises are now embracing sustainable initiatives, albeit at varied paces. For instance, the related companies, Nigerian Bottling Company Limited and Coca-Cola Nigeria Limited, are actively showcasing their dedication to reducing energy and water consumption, emissions and waste through substantial investments in combined heat and power plants, effluent treatment facilities and hybrid solar systems within their manufacturing facilities. Furthermore, the companies have reaffirmed their global pledge to ensure that all consumer packaging becomes 100% recyclable by 2025, demonstrating their commitment to sustainability and responsible environmental practices. Relatedly, British American Tobacco (BAT) Nigeria completed a USD350,000

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investment in a move to transition from the use of diesel to compressed natural gas (CNG) in its independent power plant (IPP).

Similarly, Access Bank Plc. introduced a range of pioneering initiatives – taking the lead in introducing waste recycling practices within Nigeria’s financial sector, extending its recycling efforts to 75 locations nationwide and empowering more than 200 entrepreneurs, with a notable focus on clean cooking stove technology, with 70% of these beneficiaries being women. These efforts, amongst many others, have garnered significant recognition, resulting in Access Bank receiving numerous awards for its sustainability and social impact initiatives.

The increased efforts and awareness in coming up with ESG initiatives by corporations both globally and within Nigeria points to a promising outlook for the advancement of sustainability practices in Nigeria and thus the financing and investments into such practices.

### *DFI funding*

Development Finance Institutions (DFIs) are entities established to provide financial support for economic development projects. DFIs are mostly established by governments and source their capital from national or international development funds or benefit from government guarantees. DFIs mainly focus on enhancing sustainable economic growth. Against this backdrop, we have seen DFIs such as the International Finance Corporation (IFC) set ESG standards and partner with industry players and stakeholders to further ESG objectives. The IFC’s ESG policies and guidelines are also being adopted as market standard and embedded in operational policies by corporations and investors. The much needed and increased investments by DFIs will contribute to investment in ESG or sustainable projects.

### *The Equator Principles*

The Equator Principles (EPs) are a voluntary set of standards that serve as a benchmark for identifying, assessing and managing environmental and social risks related to the financing of development projects. The EPs were developed by the IFC and a group of commercial banks in 2003 but have undergone a number of revisions, with the most recent version being EP4.

Financial institutions that have embraced the EPs make a commitment to refrain from extending loans to borrowers that are unable to or will not adhere to their social and environmental policies and procedures. 140 financial institutions in 39 countries are members of the Equator Principles Association (the “EP Association”). The EP Association promotes and encourages the adoption and implementation of the EPs by financial institutions. Interestingly, in Nigeria, both Access Bank Plc and Fidelity Bank Plc have adopted the EPs and are members of the EP Association, which makes them Equator Principles Financial Institutions (EPFIs).

It is also worth noting that DFIs like the Africa Finance Corporation (AFC) adopt the EPs and stipulate as one of the requirements to be complied with by the recipient of its funds, compliance with IFC performance Standards (which the EPs are based on) and the EPs.

### *Carbon Border Adjustment Mechanism*

The European Union (EU), as part of its efforts to fight climate change, signed the Carbon Border Adjustment Mechanism (CBAM) into law on 10 May 2023. The CBAM is a measure to prevent the risk of carbon leakage – ie, when companies in heavily regulated countries move carbon-intensive production overseas to take advantage of lax environmental standards. The CBAM will assess the emissions released in producing

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goods and equalise the price of carbon between domestic products and imports of specific products. This will ensure that efforts to reduce carbon emissions are not counterproductive. It is expected that CBAM will reduce greenhouse gas emissions to 55% below the 1990 levels by 2030. As businesses in African countries may be negatively impacted by this initiative if products sought to be exported by them are carbon intensive, policies such as the CBAM may incentivise the drive to decarbonise and provide increased opportunities for ESG investing.

## Challenges to ESG Investing in Nigeria

### *Inadequate regulations*

The regulatory framework governing ESG investing in Nigeria is notably inadequate. For instance, whilst the Social Bonds Rules and the Green Bonds Rules commendably establish reporting procedures and specify how the proceeds from social and green bonds should be utilised, they do not stipulate any penalties for instances of false reporting or for the mishandling of bond proceeds. Without the implementation of strong enforcement mechanisms, achieving these objectives may present challenges.

Similarly, although the Green Bonds Rules provide for the preparation and filing of annual green bond reports and the need for an assessment report by an independent assessor, they fail to stipulate the need for verification of the assessment reports and no standards are set for the assessment reports. This presents a lacuna in the Green Bonds Rules.

However, given the evolving nature of the ESG regulatory framework in Nigeria, it is expected that future amendments and issued guidelines will address this issue by introducing penalties for non-compliance.

### *Limited opportunities*

ESG investing is relatively new and evolving in Nigeria and as such, the available opportunities are not yet sufficient. While the growing efforts made by regulatory bodies and the federal government to implement regulations and foster initiatives like the social and green bond issuances, which are acknowledged as steps in the right direction, it is evident that much more needs to be done. There remains a substantial gap between Nigeria and its counterparts in developed economies when it comes to sustainability investments. Closing this gap requires further commitment, innovation and alignment with global sustainability practices to create a more robust and inclusive ESG investment landscape in the country.

### *Data accessibility*

ESG investing is heavily reliant on information enabling investors to make well-informed decisions aligned with sustainability principles. However, Nigeria faces challenges related to data accessibility. There is a pressing need for enhanced transparency and improved access to data for stakeholders and to provide businesses in Nigeria with accurate information to monitor their sustainability endeavours effectively.

## Conclusion

While ESG investing in Nigeria presents promising opportunities for sustainable growth and positive societal impact, it is important to address the current challenges faced by investors and other stakeholders in the capital market. The Nigerian government's commitment to growth in sustainability-focused endeavours is evident in the evolving regulatory framework. With collaborative efforts from regulators, businesses, investors and individuals, Nigeria stands to overcome these challenges and pave the way for a more sustainable future.

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## Social and Governance Trends in Perspective: An Overview

Environmental, social and governance (ESG) principles have gained significant traction in the global corporate landscape, with companies seeking ways to align their operations with these ESG principles. In Nigeria, businesses are actively pursuing strategies to demonstrate their ESG commitment. This article examines the various laws and regulations that have mandated companies to ensure compliance with social and governance requirements under the ESG framework and the voluntary initiatives taken by enterprises in Nigeria in this regard. Accordingly, in Part A we examine the key trends and developments in respect of the social aspect of the ESG framework, while in Part B we address trends and developments relating to governance.

### Social Trends

#### Introduction

In Nigeria, the social aspects of ESG principles have gained significant importance, shaping corporate responsibility, community well-being, employee relations and more.

From a regulatory standpoint, Nigeria has enacted specific laws and regulations that either impose obligations on, or incentivise, companies to actively engage in initiatives aimed at enhancing social well-being in the communities where they operate, among their employees and consumers. These legal measures underscore the importance of corporate social responsibility and social initiatives as well as the welfare of employees in the Nigerian business landscape. These laws include, but are not limited to, the Federal Competition and Consumer Protection Act (FCCPA), the Petroleum Industry Act (PIA), the National Housing Fund Act (NHFA), the Factories Act (FA), the Industrial Training Fund Act (ITFA) and Employee Compensation Act (ECA).

## Legal framework for social initiatives in Nigeria

At this juncture, we will analyse the specific laws and regulations that have established the foundation for companies to actively participate in social initiatives in Nigeria. This analysis will help us ascertain the full extent of the obligations and responsibilities imposed on companies operating within Nigeria with regard to their social commitments.

### Factories Act

The Factories Act, 1987 is a law that regulates the operations of factories and manufacturing industries in Nigeria. The Factories Act covers aspects such as health, safety and welfare of factory employees.

The Factories Act imposes obligations on factories such as to:

- make adequate provisions for the cleanliness of the factory;
- ensure that factories are not overcrowded as to cause risk or injury to the health of the employees;
- make provision for the adequate ventilation of each workroom;
- ensure that the workrooms are adequately illuminated with suitable lighting whether natural or artificial; and
- provide sanitary conveniences for employees.

Factories must also ensure that machinery used in the factory, whether fixed or movable, is in good condition and free from patent defects. It is also expected that provision is made for the welfare of employees such as the provision of drinking water, washing facilities, accommodation for clothing and first-aid, amongst others. In the event of any contravention of any provision in the FA the owner of the factory shall be guilty

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of an offence and shall be liable to fines or to a term of imprisonment.

### *Employee Compensation Act*

To address the limitations of the FA, the ECA 2010 was enacted to take care of the compensation of workers injured in the course of employment and the appropriate compensation or damages to be paid to an injured employee. In alignment with the social initiatives encompassed by the ESG principles, the ECA mandates that any employee, whether or not in a workplace, who suffers either any disabling injury, mental stress, occupational disease, or hearing impairment arising out of or in the course of employment, shall be entitled to payment of compensation. The compensation to the employees is to be paid out of the Employee Compensation Fund (the Fund) established under the ECA, with employers being obligated to make a minimum monthly contribution of 1% of the total monthly payroll into the Fund. This underscores the commitment to addressing social well-being and protection of employees.

### *Petroleum Industry Act*

Under the PIA, certain obligations were imposed on oil and gas companies to engage in initiatives geared towards enhancing the overall well-being and advancing the social welfare of the host communities in which they operate. The PIA stipulates that a settlor or a group of settlers, operating under a joint operating agreement, is obligated to establish a Host Community Development Trust (HCDDT). The primary objective of this trust is to support the advancement of both the economic and social infrastructure within the communities situated in the oil-producing areas.

### *National Housing Fund Act*

The NHFA is a framework for the establishment of a fund with the primary objective of facilitating

the mobilisation of the fund for the provision of houses for Nigerians at affordable prices. Under the NHFA, an employer who has in its employment an employee earning the minimum wage and above shall deduct 2.5% of the monthly salary of that employee as the employee's contribution to the fund. It is important to highlight that failure of an employer to make the statutory deductions as provided under the NHFA constitutes an offence which is liable to fines and imprisonment.

Furthermore, under the NHFA, every commercial or merchant bank shall invest in the fund 10% of its loans and advances at an interest rate of 1% above the interest rate payable on current accounts by banks. Additionally, every registered insurance company in Nigeria shall invest a minimum of 20% of its non-life funds and 40% of its life funds in real property development of which not less than 50% shall be paid into the fund through the Federal Mortgage Bank of Nigeria at an interest rate not exceeding 4%.

Employees can access these funds on favourable terms to meet their housing needs.

### *Federal Competition and Consumer Protection Act*

Protecting consumers' rights and interests is a vital social element under the ESG principles. Companies are required to be transparent and honest in their dealings with customers and provide safe and quality products and services. The FCCPA contains a long list of obligations and liabilities for companies that offer goods and services to consumers. Further to the FCCPA, companies are mandated to ensure that they offer non-defective goods and services to consumers. Companies are also obligated to ensure that goods received by consumers are fit for the purpose for which the consumer purchased

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the goods. This is crucial because the FCCPA imposes liability on a company that supplies defective goods or services that result in harm to a consumer. It is noteworthy that this liability cannot be excluded or restricted even through a written agreement.

### *Other regulatory regimes for the protection of consumers in Nigeria*

Another regulatory framework aimed at safeguarding consumer rights in Nigeria is the Standard Organization of Nigeria Act (the “SON Act”). The primary objective for the enactment of the SON Act is to establish a body responsible for the standardisation of methods and products in Nigerian industries.

The National Agency for Food and Drugs Administration and Control Act (the “NAFDAC Act”) is yet another piece of legislation that seeks to protect consumers. The NAFDAC Act established the National Agency for Food and Drugs Administration and Control (NAFDAC). NAFDAC regulates and controls quality standards for foods, drugs, cosmetics, medical devices, chemicals, detergents and packaged water imported, manufactured locally and distributed in Nigeria.

### *Industrial Training Fund Act*

The ITFA was enacted with the aim of creating a fund known as the Industrial Training Fund (ITF) to foster and incentivise skill development within the industrial and commercial sectors of Nigeria. The ITFA seeks to ensure and facilitate the provision of training for both existing employees and prospective hires in the fields of industry and commerce. Furthermore, the ITFA mandates employers to offer adequate training to their local workforce, with the aim of enhancing their job-specific skills.

The ITFA imposed an obligation on every employer having either five or more employees in its establishment or having less than five employees but with a turnover of NGN50 million and above per annum, to contribute every year to the Industrial Training Fund 1% of its total annual payroll. The ITFA further criminalises the failure of an employer to furnish the returns as required under the ITFA.

### *Corporate social responsibility: beyond the regulatory standpoint*

Beyond the need to comply with regulatory requirements, Nigerian companies have proactively embraced Corporate Social Responsibility (CSR) to enhance community well-being and mitigate potential hostilities with the host communities. Many companies have established charitable entities like the MTN Foundation, Dangote Foundation and the Tony Elumelu Foundation. In subsequent paragraphs, we will highlight several factors that have contributed to many companies in Nigeria proactively engaging in CSR initiatives.

### *Risk of hostility with host communities*

Prior to the enactment of the PIA in 2021, there were many incidences of hostilities between some of the oil and gas companies and their host communities in the Niger Delta region of Nigeria. These hostilities often led to the killing and kidnapping of staff of the oil and gas companies and the destruction of oil and gas pipelines, amongst others. In order to curb these hostilities and to address some of their long-standing concerns, some of these oil companies have initiated programmes such as scholarships for local residents, employment opportunities for community members, and the provision of healthcare, educational facilities, and other infrastructure projects intended to uplift their host communities. Research has demonstrated that

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in areas where oil companies have implemented robust CSR initiatives, conflicts have diminished, and the host communities have even taken on the responsibility of safeguarding critical infrastructure located in those regions.

### *Litigation risks*

Companies and entities that do business with little or no consideration for ESG factors expose themselves to litigation risks. In Nigeria, litigation has arisen in response to a variety of ESG-related matters especially as it pertains to social matters. These legal suits often lead to companies paying damages to host communities where they operate. In 2010 the Federal High Court, in a suit filed by the Ogoni people, ordered Shell Petroleum to pay a sum exceeding NGN49 billion to the Ogoni people for various forms of negligence, which led to the devastation of the Ogoni Community in the Niger Delta region of Nigeria.

These litigation risks have made companies proactively engage in social initiatives that would eventually improve the well-being of their host communities.

### *Threat of boycott*

There is a growing demand for companies to actively support the social causes of the communities in which they operate. A notable example of this occurred during the “End SARS” protests in Nigeria in 2020, where Nigerian youths rallied to demand police reforms and the disbandment of the Special Anti-Robbery Squad (SARS). Many companies stepped forward to support the protesters by providing relief materials and refreshments. Many youths threatened to boycott businesses that did not show support for the cause.

It was reported that the act of certain startup enterprises to support the protesters had a positive impact on their future public relations standing, leading to increased public patronage of their products and services.

### **Governance Trends**

#### *Overview*

There is a growing necessity in Nigeria for businesses to integrate ethical considerations into their corporate governance process. At board level, Nigerian enterprises are adopting governance strategies that prioritise voluntary and mandatory ESG disclosures, management and employee-level diversity and inclusion, fair remuneration and operational transparency, amongst others. Notably, these corporate governance efforts align with constitutional objectives to promote diversity and inclusion, fair working conditions and remuneration and environmental safety, among others. There have been recent regulatory initiatives channelled towards ensuring the prioritisation of ethical corporate governance, in line with the globally evolving landscape. These regulations, discussed in greater detail below, have put greater pressure on enterprises to increase corporate disclosures, transparency, board room diversity and fair remuneration, and to prevent bribery and corruption.

#### *International Sustainability Standards Board Global Sustainability Disclosure Standards*

In fulfilment of its core objective to develop a global baseline of sustainability disclosure, the International Sustainability Standards Boards (ISSB), on 26 June 2023, issued two of what is expected to be a series of standards on sustainability disclosures. The first standard is on General Requirements for Disclosure of Sustainability-related Financial Information (IFRS S1), while the second is on Climate-related Disclosures (IFRS S2). Notably, Nigeria was reportedly the

first African country to adopt both the IFRS S1 and IFRS S2, as these standards were adopted by the Financial Reporting Council of Nigeria, and the NGX Regulation Limited. We consider briefly an overview of the ISSB and what this means for Nigerian companies.

## *IFRS S1*

The IFRS S1 on general sustainability disclosures seeks to ensure that companies make disclosures on their sustainability-related risks and opportunities (SRROs), which are fundamental towards influencing the decision of investors and other key stakeholders to provide resources to such companies. Broadly speaking, the IFRS S1 covers four key areas, namely viz: governance, strategy, risk management, and metrics and targets.

### (i) Governance

According to the IFRS S1, sustainability-related financial disclosures on governance are supposed to enable investors or other persons relying on the disclosure to appreciate the governance processes, controls and procedures that an enterprise applies to manage SRROs. To achieve this, enterprises are to disclose information about the internal governance body or individuals within the enterprise that exercise oversight over SRROs, and the approaches adopted towards managing SRROs. Further, disclosures are required to specify the role of management in the governance processes, controls and procedures used to monitor, manage and oversee SRROs.

### (ii) Strategy

Further, the IFRS S1 emphasises the need for enterprises to make disclosures on strategies for managing SRROs. This envisages disclosures on

the SRROs that could reasonably impact on the enterprise, the realised and potential impact of such SRROs on the enterprise's business model and value chain, decision-making process, and financial performance. Further emphasis is put on "resilience", as enterprises are to disclose information on their capacity to adjust to uncertainties posed by sustainability-related risks.

### (iii) Risk management

Further, the IFRS S1 requires disclosure on an enterprise's process and policies used to identify, assess, prioritise and monitor sustainability-related risks, and how such processes are integrated into the enterprise's overall risk management process. Beyond risks, this entails disclosures on the processes that drive the identification, assessment, prioritisation and monitoring of sustainability-related opportunities.

### (iv) Metrics and targets

The IFRS S1 mandates enterprises to disclose each SSRO using a metric required by an applicable IFRS Sustainability Disclosure Standard and the metric such enterprise uses to measure and monitor an SSRO and its performance, including progress towards any targets the enterprise has set, and any targets it is required to meet by any law or regulation. The metrics to be used by an enterprise to disclose SSROs must be associated with the enterprise's particular business models and activities, or have other common features that characterise the enterprise's participation in that industry.

## *IFRS S2*

The focus of the IFRS S2, as stated earlier, is on climate-related disclosures. It aims to ensure that investors or other stakeholders relying on such report can make decisions as to whether to

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provide resources to the entity. The IFRS S2 covers disclosures on both climate-related physical and transition risks, as well as climate-related opportunities available to an entity. Much like IFRS S1, the disclosures in IFRS S2 are organised around: governance, strategy, risk management and metrics and targets. However, certain elements stand out in respect to IFRS S2, as discussed below.

## (i) Utilisation of scenario analysis

In assessing its resilience to climate-related changes, an entity is required to utilise a scenario analysis that is commensurate with its circumstances, including the entity's exposure to climate-related risks and opportunities and assessments of skill, capabilities and resources at its disposal. Also, in determining the appropriate approach to the scenario analysis, an entity is required to utilise reasonable and supportable information that is available to such entity as of the reporting date, without undue cost or effort. Notably, given that circumstances change over time, IFRS S2 provides that an entity's approach to scenario analysis may vary from one reporting period to another.

## (ii) Disclosures on Scope 1, Scope 2 and Scope 3 Greenhouse Gas Emissions

Under IFRS S2, entities are required to disclose direct greenhouse gas (GHGs) emissions that occur from sources owned and controlled by it (Scope 1 Emissions); indirect GHGs emissions from purchased electricity, steam, heating or cooling consumed by it (Scope 2 Emissions); and GHGs emission outside Scope 1 and Scope 2, but which occur in the value chain of an entity including upstream and downstream emissions (Scope 3 Emissions).

## *Companies and Allied Matters Act 2020*

The Companies and Allied Matters Act (CAMA) 2020 is the primary law regulating companies in Nigeria. As part of the efforts to promote ESG considerations at the board level, CAMA provides that directors have a fundamental responsibility to consider the impacts of their operations on the environment. Further, CAMA seeks to revamp the structure of the boards of public companies, by mandating every public company to have at least one-third of its directors as independent directors.

## *The Nigerian Code of Corporate Governance 2018*

The Nigerian Code of Corporate Governance (NCCG) 2018 was issued by the Financial Reporting Council of Nigeria (FRCN) to institutionalise corporate governance best practices in Nigerian companies. The NCCG applies to public companies, private companies which are holding companies of public companies, concessioned or privatised companies, and regulated private companies.

## *ESG-related policies and implementation*

Notably, the NCCG encourages companies to pay adequate attention to issues of sustainability including environment, social, occupational and community health and safety, as this will ensure successful, long-term business performance and can project companies as responsible corporate citizens contributing to economic development.

From a governance perspective, boards are to issue policies towards promoting sustainability, employees' welfare, environmental safety, equity and diversity, accommodation of persons with disabilities, and overall ESG best practices. Beyond putting in place the aforementioned

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ESG-related policies, boards are required to implement them and report on their compliance.

### *Board structure and composition*

Expectedly, the NCCG emphasises that for the effective discharge of the duties of a board or board committees, there needs to be diversity in terms of experience and gender, without compromising competence, independence or integrity.

### *Remuneration governance*

The NCCG provides that companies should remunerate fairly, responsibly and transparently in order to promote the achievement of strategic objectives and positive outcomes, in the short, medium and long term.

### *Relationship with shareholders*

As of necessity, the NCCG provides that boards should regularly engage shareholders to facilitate a greater understanding of the company's business, governance and performance, and enable shareholders the opportunity to exercise ownership rights and express their views to the board on areas of interest.

### *Corporate governance evaluation*

Beyond putting in place these ethical corporate governance strategies, the NCCG further requires a system in place for evaluating a company's corporate governance practices, to ensure that governance standards, practices and processes are adequate and efficient.

### *SEC Corporate Governance Guidelines 2020*

The Securities and Exchange Commission (SEC) issued the SEC Corporate Governance Guidelines 2020 (the "SEC Guidelines"), structured along the principles of the NCCG, with the aim of improving the standards of transparency, accountability and good corporate govern-

ance of public companies. A notable provision under the SEC Guidelines is the requirement for public companies to treat corruption as a core sustainability issue. Accordingly, companies, boards and individual directors must commit themselves to transparent dealings and establish a culture of integrity, with no tolerance for corruption. Further, the SEC Guidelines require public companies to comply with a disclosure regime, beyond any specified under CAMA. The risk of failing to comply with the aforementioned requirements is that a defaulting company will be liable to a fine of NGN500,000 at first instance and a further fine of NGN5,000 for every day that the default persists.

### *The Nigeria Stock Exchange Sustainability Disclosure Guidelines 2018*

The Nigeria Stock Exchange (now the Nigerian Exchange Limited) issued Sustainability Disclosure Guidelines (the "Disclosure Guidelines") which were approved by the SEC on 9 November 2018. Notably, the Disclosure Guidelines make provision for the reporting of ESG performance by listed companies and delineate a step-by-step approach that will be adopted towards ensuring sustainability integration in organisations. This step-by-step approach envisages the identification of sustainability drivers, developing sustainability strategies, establishing governance and accountability approaches, setting targets and action plans, monitoring progress and making reports. Further, publicly listed companies are mandated to ensure that their sustainability reports contain information on the following key areas:

- the structure, strategy, profile and governance of how economic, environmental and social risks and opportunities are managed;
- the scope and boundaries, for example, on the basis of physical locations of the report-

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- ing organisation, entities within the organisation and operations within the value chain;
- the material sustainability matters and how they are identified and managed by the organisation;
- identification of its stakeholders and how it has responded to their reasonable expectations and interests; and
- such other additional ESG issues that are relevant to the business.

Accordingly, NGX will annually publish the names of issuers that have complied with reporting requirements and have submitted their sustainability reports. The Disclosure Guidelines further provide that the NGX may introduce sustainability ratings and indices to assess and track the performance of the companies that make disclosures.

## Conclusion

In conclusion, the above trends are impacting the social and governance aspects of ESG principles for Nigerian companies. On the social front, the various laws and regulations have compelled companies to engage in initiatives aimed at enhancing social well-being, employee welfare and consumer protection. These legal measures underscore the significance of corporate social responsibility and social initiatives in Nigeria's business landscape.

In terms of governance, regulatory initiatives have promoted ethical corporate governance, emphasising the importance of transparency, diversity, and sustainability in corporate governance. Furthermore, with the progressive adoption of the ISSB Global Sustainability Disclosure Standards in Nigeria, we expect to see improved disclosure on sustainability-related matters.

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