INTRODUCTION

1.1 The twentieth century is well regarded as the century of energy, as it ushered in transportation by automobile and heavy equipment vehicles. In the same century, commercial airlines began to operate and much of our commercial world was shaped by the development of energy resources. Sea haulage also moved past the age of coal to the age of petroleum; residential and commercial heating and cooling became substantially reliant on networks providing gas and electricity.

1.3 Electricity generation and consumption have become the indices for measuring growth and development in contemporary societies. As such, the classification of nations into developed, developing and subsistence economies

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3 Commentary may be found in various literature stating that the use of fuel for ships became popular after the decision of the First Lord of the Admiralty, Winston Churchill, on the eve of World War I, to shift the power source of the British Navy ships from coal to oil to make the fleet faster than its German counterpart and therefore retain its dominance. Other related literature includes Waldron Grutz, “Prelude to Discovery”, online: <http://www.saudiaramcoworld.com/issue/199901/prelude.to.discovery.htm>.
is linked to the aggregate production and consumption of electrical energy. Consequently, it becomes vital for any nation aspiring to join the league of developing and, eventually, developed economies to devise strategies for providing adequate or optimum electrical energy for a total transformation of her people’s standard of living and that of the society from the backwaters of technological ineptitude to an industrial, modern and affluent economy.

1.18 Power plants require fuel to function; just the way an aircraft or a motor vehicle requires aviation fuel or premium motor spirit/automotive gas oil to fire its engine. Apart from renewable fuel sources such as wind and sunlight, natural gas is regarded as the fuel of the future because of its advanced thermal efficiency, clean combustion characteristics and the significant volume of natural gas available worldwide. Natural gas is extracted from underground wells and transported to customers through pipelines or shipped in cryogenic tanks as liquefied natural gas and then re-gasified at its final destination.

1.23 The process described above creates a lot of waste heat and is generally tagged the *Open Cycle Gas Turbine Power Generation System*. There are, however, newer technologies - cogeneration and combined-cycle generation - which are more efficient and reduce waste. Whilst *Cogeneration* is...
LEGAL & REGULATORY REGIME OF THE NIGERIAN ELECTRIC POWER SECTOR

INTRODUCTION

2.1 Prior to the enactment of the Electric Power Sector Reform Act (the “Electricity Reform Act” or the “Act”) No. 6 of 2005, the Nigerian electric power sector (the “Power Sector”) was governed by a number of legislation. These pieces of legislation included the Constitution of the Federal Republic of Nigeria 1999 (the “1999 Constitution”), the Electricity Act, Cap 106, Laws of the Federation of Nigeria (LFN) 1990 (as amended) and the regulations made pursuant thereto.

2.2 Other relevant legislation included the National Electric Power Authority Act, Cap 256, LFN 1990 (as amended), the...

2.14 Subsequently, and as specified in the Electricity Reform Act, the NCP on March 1 2006, issued the Electric Power Sector Reform (Transfer of Assets, Employees, Liabilities, Rights and Obligations) Order No. 1 of 2006 (“SC Order”), pursuant to which the PHCN was required to transfer its assets, employees, liabilities, rights and obligations to the listed PHCN successor companies within 6 months. Further, in July...
2.17 Whilst the NELMCO was established in 2005 as a special purpose entity to manage the non-core assets and liabilities of the defunct NEPA, the Bulk Trader was set up on September 23...

**Development of a Competitive Electricity Market**

2.18 By virtue of *Section 24* of the *Electricity Reform Act*, the NCP may, at any time and by such means that it deems appropriate, begin the process of privatisation of the successor companies holding licenses in generation, distribution and transmission in accordance with the *Public Enterprises (Privatisation and Commercialization) Act 2004*.\(^7\)

2.99 Another interesting point to note is that a distribution company may only disconnect supply to a customer’s address when the customer has not paid his bills, where amongst other conditions, the payment date is at least 10 working days from...

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THE NIGERIAN ELECTRIC POWER SECTOR REFORMS

INTRODUCTION

3.1 Until the 1990s, infrastructure sectors including the Electric Power Sector were regarded as ‘natural monopolies’.8 It was believed that allowing single firms, which were usually State or Government owned, was the most cost-effective way of providing electric power to the citizenry.9 The foregoing, was more so the case because of the historical inclination towards considering electric power supply as a social service requiring government to intervene and control delivery systems in a more fundamental way.10

3.3 The Federal Republic of Nigeria was one of the countries that took heed and began a reform program, beginning from the late 1990s. To show serious intent, the Federal Government of Nigeria (the “FGN”) hired a South African consulting firm, NERA together with Anil Kapoor and Trevor Byer of the World Bank,11 to work with the Bureau of Public Enterprises (BPE).12

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8 William Baumol provided the current formal definition of a natural monopoly as “an industry in which multiform production is more costly than production by a monopoly”. See definition in Baumol, William J, “Proper Cost Tests for Natural Monopoly in a Multiproduct Industry” (1977) 67 American Economic Review 809-822.


12 The BPE team, which was initially led by Abdulkareem Adesokan, made very important inputs leading to the final version of the National Electric Power Policy that was approved by the Electric Power Sector Steering Committee (EPIC) and published in the year 2000.
THEORETICAL BASIS FOR ELECTRICITY MARKET REFORMS

3.18 Research shows that the process of a full electric power reform program for a government-run power sector typically consists of what can be described as the... Most successful reform processes undertaken in connection with formerly State-run electricity sectors have been built around these basic elements, with the detailed design of each program reflecting the particular circumstances of the country and its electricity sector. These pillars will now be briefly examined.

THE REFORMS IN THE NIGERIAN ELECTRIC POWER SECTOR

3.29 The reforms in the Nigerian Electric Power Sector have been multi-faceted and commenced upon the realization that a substantial measure of economic growth and development could not be achieved without solving the many challenges the industry was facing. Background information necessary for the understanding of the ongoing reforms is the fact that a large part of the process is contained in the...

3.33 As previously stated, the on-going reforms led to the de-establishment of NEPA and creation of PHCN, which was unbundled into 18 successor companies, comprising 6 Gencos, a Transmission Company and 11 Discos, before the sale of majority (or all) of the equity in 15, concession of 2 and the execution of a Management Contract in connection with the Transmission Company of Nigeria.¹³ This arrangement, together with other “sweeteners”,...

Contracting out the Management of the Transmission Company of Nigeria (TCN)

3.49 Also uncertain at some point was the contracting out of the management of the Transmission Company of Nigeria. In the electricity industry, transmission involves the transportation of power at high voltages over long distances. Transmission has been a major challenge to private investment in Nigeria’s electricity sector because the transmission infrastructure in place is not sufficient to evacuate the power which the various power generation companies may produce. In fact the country lacks the capacity to evacuate more than circa 5800MW of its circa 8500MW installed capacity.

3.50 For national security reasons and other inherent issues in electricity, transmission is a natural monopoly. That is, there can’t be competition in the transmission business nor can many companies undertake transmission activity. Consequently, under the reform program, the transmission system will remain an asset of the Federal Government and in line with the policy of private participation however, a competent Management Contractor, Manitoba Hydro International of Canada, has been appointed for a period of 3 years in the first instance. After the conclusion of the first 3 years, the Government would consider a renewal for an additional 2 years.

_The Aggregate Technical Commercial and Collection Losses Reduction As Key Bid Parameter_

3.69 For the privatisation of the Distribution Companies spun-off from the PHCN, the BPE and indeed the NCP chose to adopt a combination of the following parameters: the entity with highest financial bid and the bidder with the best service or efficiency program. The efficiency bid parameter in this case, is the reduction of the Aggregate Technical Commercial and Collection (ATC&C) Losses; with premium placed on this bid parameter. The decision to place a premium on reduction of ATC&C Losses as a bid parameter was largely because Distribution Companies are to a large extent, natural monopolies whose privatisation does not immediately make the setting up of alternative firms by the private sector viable. The privatisation of the Distribution
Companies, as a result of their monopoly status in their operating areas, poses a different challenge from routine privatisation programs which would be difficult to address using the usual highest bidder parameter model as the key bid parameter. This is particularly the case because it is not sufficient to provide the highest financial bid as that alone would not reduce the ATC&C losses. It appears that a bit more would be required.

**Sale of the National Integrated Power Project (NIPP) Plants**

3.76 Amongst the 6 successor Generation Companies, the NCP approved the privatisation of the thermal power plants and retention by the Government of the hydro plants (Kainji & Jebba) and Shiroro due partly to the huge capital base of the hydro plants and water ownership rights, which cannot be privately held, in line with global best practices.

3.78 It is pertinent to note that only concessions for the operation of the hydro plants are being granted to private investors whilst the gas plants are being privatised through share sale. The privatisation of the NIPP plants recently commenced.

3.79 *Prima facie* it would appear that the NIPP privatisation process seems to be facing the consequence of certain investment errors of the General Olusegun Obasanjo administration. The NIPP cannot easily be privatised because it is a set of investments done without a definite legal form; its financing was derived from the excess crude oil funds of that era in which every government quarter was interested, thus, its strange ownership structure.

3.88 Furthermore, a contractual framework to ensure bankability, in the form of a Gas Sale and Aggregation Agreement (GSAA), together with a Gas Transportation Agreement (GTA) has been developed and are now in place to streamline the operations of the sector. A gas transmission network code has also been developed. The network code complements...
FINANCING POWER SECTOR PROJECTS

INTRODUCTION

4.1 Given the capacity deficiency in the Nigerian Electric Power Sector, caused primarily by the lack of Government investment in the country’s power plants and general electricity infrastructure over the preceding decades, it is apparent that the role of the private sector will be crucial for there to be improvements in the power generation, transmission and distribution infrastructure. The Federal Government’s recognition of the need for private sector investments is evidenced by the following statement in the Roadmap for Power Sector Reform of 2010 (the “Roadmap”):

“To meet our Vision 20:2020 target of 40,000MW will require investments in power generating capacity alone of at least US$3.5 billion per annum for the next 10 years. Correspondingly large investments will also have to be made in other parts of the supply chain (i.e. the fuel-to-power infrastructure and power transmission and distribution networks). These sums cannot and will not be funded and directed by the Federal Government. Rather, central to the development of the sector will be the need to incentivise the private sector to partner with government in this endeavour.”

4.3 Premised on the foregoing, this Chapter concentrates on the acquisition financing of the power generation and distribution companies formerly owned by the Power Holding Company of Nigeria (PHCN) being privatised by the

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14 See The Roadmap at 4.
Federal Government of Nigeria. It also looks at financing of the development and expansion of equipment, infrastructure and machinery, owned by the privatised companies. Indeed, it is not sufficient that the successful preferred bidders are able to finance the acquisition of the interest obtained in the privatised companies, it is also important that they have the requisite financial resources to improve on the assets and infrastructure of the relevant companies.

4.51 Additionally, the EPC contract should make provision for ‘delay liquidated damages’ and ‘performance liquidated damages’ which make the EPC contractor liable to pay liquidated damages in the event of a delay or failure to meet specified standards. Solicitors should note that the market practice (at least in Europe) is to have a contractor with a good rating by a rating agency. Whilst drafting the contract, cognizance should also be taken of the fact that a claim for liquidated damages may fail, if drafted in such a way as to be considered a penalty by the courts.

Bankability of the PPA

4.68 PPAs have 2 broad categories of terms. These are the fiscal (price) and non-fiscal (non-price) terms. Some of the more important terms include the Conditions Precedent, Term, Buy-Out/Buy-Out Price, Force Majeure, Minimum Despatch (i.e Take or Pay), Tariff/Tariff Structure, Liability, Liquidated Damages, Third Party Sales and Deemed Commissioning.

Tariff/Tariff Structure

4.69 For a PPA to be considered bankable at all, the tariff structure must be clear. It must also give the would-be lenders a fairly good idea of the likely revenue and cash flow. The key here is clarity. In negotiating the tariff structure, a dual pricing mechanism is usually adopted. The first, is the Capacity Charge, to take care of fixed cost; whilst the second, the Energy Charge, should take care of variable costs such as fuel costs and actual energy
taken by the buyer. Lenders would prefer that when energy is not dispatched, but the capacity exists, Capacity Charge would continue to be incurred, depending on the circumstances. This helps give lenders some comfort that no matter what goes wrong with the project, there will be some cash flow. In all these, there should be some flexibility, to allow for changes as a result of inflation, exchange rates and some other factors. There may also be some allowance for benchmarking and indexing.

4.113 By virtue of Section 31 of the Central Bank of Nigeria (CBN) Act, the CBN earmarked the sum of ₦300,000,000,000.00 (Three Hundred Billion Naira) for the Power and Aviation Sectors. A part of the fund related to the power sector is aimed...
POWER PROJECTS AND THE ENVIRONMENT

INTRODUCTION

5.1 The United Nations Conference on the Human Environment which took place in Stockholm, Sweden in 1972 awoke the consciousness of the Nigerian Government to the need for a holistic, rather than sectorial approach to the protection of the Nigerian environment and consequently, provisions were made in the Nigerian Constitution dealing with environmental degradation and pollution.\textsuperscript{16} In that period and up to 1988, there were sectorial regulations dealing with the environment with various responsibilities relating to environmental protection and improvement.

CURRENT LEGAL, REGULATORY & INSTITUTIONAL FRAMEWORK

The \textit{Environmental Impact Assessment Act}

5.9 A key legislation which is relevant to power projects and the Nigerian Electric Power Sector generally is the \textit{Environmental Impact Assessment (EIA) Act}.\textsuperscript{17} By the provisions of the \textit{EIA Act}, any person planning a project or activity

\textsuperscript{16} See Section 17(3)(c) of the 1979 Constitution of the Federal Republic of Nigeria. An additional provision was made under Section 17(3)(d) of the 1999 Constitution.

\textsuperscript{17} Cap E12, Laws of the Federation of Nigeria, 2004. The EIA Act seeks to instill environmental considerations into the development of project planning and execution by providing that it shall be obligatory for an EIA study to be conducted on any project likely to have a significant impact on the environment.
which may have an impact on the environment (including any oil and gas related project or development) must prepare an Environmental Impact...

The EIA Study

5.14 It is germane for an EIA study to consist of:

- the description of the activities planned under the relevant project;
- the description of the aspects of the environment that may be affected by the project, with ample data provided to enable the identification and valuation of the potential environmental effects of the proposed project;
- an assessment of the probable environmental effects of the proposed activities and the alternatives, including the direct or indirect, aggregate, short term and long-term effects;
- an identification and description of measures available to alleviate adverse environmental impacts of proposed activity and assessment of those measures ...

The Harmful Waste (Special Criminal Provisions, etc.) Act

5.33 The Harmful Waste Act, Cap H1, Laws of the Federation of Nigeria 2004 (the “Harmful Waste Act”) was promulgated in response to the illegal dumping of toxic wastes in the Koko town of Delta State (formerly Bendel State) in 1987. The Act provides the legal framework for the effective control of the disposal of toxic and hazardous waste into any environment within the territory (including offshore) of Nigeria. It also prohibits, without lawful authority, the carrying, dumping or depositing of any harmful waste in the air, land or waters of Nigeria.

5.34 The Harmful Waste Act stipulates a punishment of life imprisonment for offenders as well as the forfeiture of land or anything used in committing the offence; it further provides for the punishment of any conniving, consenting or negligent officer where the offence is committed by a corporate entity. Persons
who breach the law may be held liable in torts towards persons who have suffered injury as a result of the offending act. Similarly, where more than one person is responsible for the contamination, the *Harmful Waste Act* provides that each of the persons responsible shall be deemed to have committed a crime. Therefore, the liability of each such offender is several.

5.49 Furthermore, environmental indemnity provisions are used in transaction agreements to limit...

**THE WORLD BANK ENVIRONMENTAL GUIDELINES**

5.58 Prior to financing any project, the World Bank Group would typically require compliance with its policies and guidelines, particularly as relating to pollution prevention, including the use of cleaner production technologies. The intent of the guidelines is to minimize resource consumption, including energy use, and to eliminate or reduce pollutants at the source.

5.68 Environmental law-related issues may, at first, not appear important and failure to comply may also appear innocuous, especially to the power sector and power projects. However, a thorough review of the legal and regulatory regime together with international environmental law issues suggest that a breach of environmental compliance rules may occasion a lot of hardship and may even prevent a project from obtaining the financing it would ordinarily have obtained.

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INTELLECTUAL PROPERTY AND POWER PROJECTS IN NIGERIA

INTRODUCTION

6.1 An effective well-established legal regime for intellectual property (IP) is central to an economy that intends to remain relevant. In particular, developing economies such as Nigeria featuring multi-jurisdictional transactions are in dire need of an effective IP system as this has extensive implications on commercial activities. For instance, for investors to have the confidence to deploy capital and technology in the country, they must be certain that the “know-how” and other intellectual property rights that underpin their investments are legally protected from unlawful infringements, such as unauthorised copying or use.

Ownership and Protection of Intellectual Property in Power Projects

6.56 It is important to have a clear legal arrangement that regulates the ownership of the various intellectual property rights that underpin generation, transmission and distribution activities. There are bound to be major issues arising from brand registration, patents for invention and copyright of software with the attendant question being how much value these bring to the power value chain. It is therefore necessary, that intellectual property rights are clearly defined from the onset and the relevant registrations obtained as the
first step towards good brand management is the protection of all relevant intellectual property rights (copyright, trademarks, patents, industrial designs etc.). This should begin with identifying the brands that are of importance or value to the business and thereafter, seeking all possible legal protection for the same.

6.77 It is important to note that the acquisition and importation of capital goods (including machinery, equipment and even some raw materials such as crude oil) may also fall under the purview of NOTAP especially as these will usually involve the transfer of technical expertise and or the execution of licence and consultancy agreements.
DRAFTING, REVIEWING AND NEGOTIATING
POWER SECTOR DOCUMENTATION

INTRODUCTION

7.1 This chapter describes in the main, (1) some practical techniques for drafting, reviewing and negotiating 3 key contracts, typically utilized when developing power projects within the Nigerian electric power sector (“Power Sector”); and (2) legal and commercial issues which may arise when negotiating the detailed language of the said key contracts. These 3 contracts are the Power Purchase Agreement, the Engineering Procurement and Construction Contract and the Gas Sales Agreement. Given Nigeria’s abundant gas deposits and the use of gas as the most common fuel to fire power plants, the Gas Sales Agreement, which traditionally was not a key electric power-centric agreement in Nigeria, has now become quite focal within the Power Sector.

“BELLING THE CAT” – THE NEGOTIATION STRATEGY THAT SHOULD WIN

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19 A power project is deemed as “Greenfield” when the underlying asset is being developed from scratch; or “Brownfield” when the underlying asset is being refurbished or expanded etc. A site may, however, also be referred to as Greenfield even though there are existing projects on it provided that those projects will not constitute a disturbance to the new power project; such that there is no need to do a reclamation or clean up.

20 The Gas Sales Agreement has various nomenclatures including Gas Supply Agreement, Gas Sale and Purchase Agreement and the Gas Sale and Aggregation Agreement, amongst others.
7.3 When negotiating, no party is likely to achieve all its objectives and understanding that each negotiation is unique and the considerations different will assist in assuring that negotiations are not long drawn or stalemated.

7.6 A party should never specify any issue as a deal breaker unless it is indeed a deal breaker, because where a bluff is not carried through, then the counter-party would keep demanding for the impossible, on the presumptions that every point is negotiable and does have a price.

7.7 Lawyers (different from mere commercial negotiators) must make it clear from the commencement of negotiations that compliance with applicable laws is not negotiable and same cannot be mitigated by any commercial or technical or business considerations.

**NEGOTIATING POWER PURCHASE AGREEMENTS**

7.8 In drafting, reviewing and negotiating Power Purchase Agreements, the parties and/or their representatives must be careful in drafting its terms, as lenders typically require that for the project to be “bankable”, certain key terms are to be retained in such Agreements where the sponsor of the project, which is the party that usually requires third party financing, indeed seeks financing.

7.9 In very simple terms, a bankable project is one with structure and documentation which lenders regard as satisfactory and thus justify being funded.

**Some Important Terms in a Power Purchase Agreement (PPA)**

7.10 There are certain key terms that should be given due consideration when drafting, reviewing or negotiating a PPA. It is important to note that prior to negotiating a PPA, a proper review of the governing legislation, such as the *Electric Power Sector Reform Act (the “Electricity Reform Act”)* of 2005 as well as
relevant rules and regulations, must be conducted. Such review will assist in
drafting and/or reviewing the terms of a PPA to ensure that same fully
complies with Nigerian law. No matter how well drafted and/or negotiated an
agreement may be, such an agreement may be rendered ineffective where its
provisions are inconsistent with the applicable law.

NEGOTIATING ENGINEERING, PROCUREMENT AND
CONSTRUCTION (“EPC”) CONTRACTS

EPC Strategy
7.45 It is of utmost importance to select the most appropriate strategy for the
EPC/Turnkey Contract when negotiating, as that would be a crucial step both
in terms of price and timing, as a variety of options are available.

Meaning and Features of EPC/Turnkey Contracts
7.47 EPC Contracts are referred to as “Turnkey Contracts”. The term “turnkey”
is used in construction contracts and contemplates the relevant contractor
performing the entirety of work required by the buyer of the goods, services and
the completed facility, and all that is required of the buyer, is the “turning of
the key” to enter the completed premises or to turn on the completed facility. It
is not unusual where the contract is for the construction of a facility (such as a
power plant), that the work to be performed by the contractor is expanded to
include “operations” and “maintenance” activities.

7.49 An EPC contract would feature time, quality and costs terms. This implies
that an EPC contract would state the time the project is expected to be
completed, the expected quality and the cost of delivery of the completed
asset...
WHAT TO EXPECT AFTER PRIVATISATION - THE FUTURE

INTRODUCTION
8.1 The privatisation of the Nigerian electric power sector is forging ahead with the signing of the Share Sale and Purchase Agreements and the Concession Agreements, together with the other relevant transaction and industry documentation,21 for 15 out of the 18 companies hived off the Power Holding Company of Nigeria (PHCN) at the Presidential Villa, Federal Capital Territory, Abuja, Nigeria, on Thursday 21st February, 2013. The privatisation of Afam Power Plc. and Kaduna Electricity Distribution Plc. was re-started because no previous bidder met the minimum technical and commercial requirements.

SPECIFIC ISSUES TO RESOLVE FOR A SUCCESSFUL POST-PRIVATISATION ERA

Introduction
8.75 This section looks at the roles the Government, preferred bidders (now “Core Investors” and or “Concessionaires”), members of organized labour and other Nigerians generally need to play for the privatisation of the electric power sector to yield the expected results. There have been several challenges along

21 All the other documents are either annexures or appendices to the Sale and Purchase Agreement executed by the Parties.
the way which have included, amongst other issues, the labour challenge, queries as to the ambitious timelines, the Multi Year Tariff Order (MYTO), the bankability of the transaction documentation and the lack or insufficiency of experts to mid-wife the process.

8.76 As regards labour, there were contentions as to what would happen to the staff of the PHCN and its successor companies, particularly with respect to their pensions and gratuity and whether they would be retained. They had threatened industrial actions, made good their industrial action threats a few times and even threatened not to allow new investors into their premises.22

8.96 Pre-paid meters and other modern equipment, facilities and infrastructure should also be utilized in the electric power sector. With pre-paid meters, where a customer who typically recharges periodically is not seen or heard of for a while, enquiries should be and such enquiries could even expose unwholesome activities, if any. Apart from the foregoing, there should also be more deployment of new metering technologies with analytics. This should be implemented together with remote monitoring technology.

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22 There have been various reports in the press, in this respect.
INTRODUCTION

9.1 The enactment of the *Electricity (Amendment) Decree 1998* and the *National Electric Power Authority (Amendment) Decree 1998* ultimately ended the monopoly status of the then National Electric Power Authority (NEPA), and paved the way for private sector participation in the Nigerian electric power sector. The Electric Power Sector Reform Act (the “*Electricity Reform Act*”) was subsequently enacted in the year 2005, heralding a holistic reform of the sector, with its main aim being to create an enabling environment for the rapid development of the Nigerian electric power sector. This, the Electricity Reform Act intends to achieve by allowing the sector thrive as a profitable business while at the same time delivering quality service to electricity consumers.

9.2 Indeed, the potential for disputes in the emerging electric power sector is very high. This is largely due to the numerous contractual relationships that would be created as a result of the opportunities arising from the ongoing reforms and issues that may arise between the various market participants (such as the generation companies, distribution companies, suppliers, consumers etc) on the one hand, and the sector regulator, the Nigerian Electricity Regulatory Commission (NERC or the “Commission”), who has been given broad powers under the *Electricity Reform Act*. For example, the Act gives
the NERC the power to make and enforce rules and regulations to govern the sector.

9.14 The purport of the above provision no doubt is the vesting of quasi-judicial powers in the Commission. Quasi-judicial powers may be defined as those powers exercised by an administrative/government agency which:

- ascertains certain facts,
- holds hearings,
- weighs evidence,
- makes conclusions from the facts as a basis for their official action, and
- exercises discretion of a judicial nature.

9.15 Thus, a quasi-judicial proceeding investigates a disputed claim, weighs evidentiary facts and reaches a binding decision. Indeed, the proceedings of administrative agencies are quasi-judicial when hearing is held, both parties participate, the presiding officer subpoena witnesses and the administrative body has the power to take remedial action. When an administrative body acts in a quasi-judicial manner, due process requires reasonable notice and an opportunity for a full fair hearing.

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23 That is the National Electricity Regulatory Commission. See section 100 of the Electricity Reform Act.
INTRODUCTION

10.1 The on-going reforms in the Nigerian electric power sector provides new prospects and possibilities for investors, whether local or foreign, especially with the Federal Government of Nigeria’s Vision 20:2020 target of 40,000MW, which requires investments of at least US$3.5 billion per annum in power generation alone. In fact, it has been estimated that the sum of US$100 billion would be required over the next 10 years for the planned expansion of the power generation, transmission and distribution infrastructure.

10.2 Already, local and foreign investors have shown interest particularly in the privatisation of the power generation and distribution companies. Massive investment opportunities and prospects still exist in other aspects of the electricity supply value chain such as exploring renewable and alternative fuel sources, for example, natural gas, coal, solar, wind, hydro; gas supply and transportation; and manufacturing of electrical equipment.

25 Much of the material used for this Chapter was obtained from the Energy Practice Group of Banwo & Ighodalo.
26 About 80% of power generating plants in Nigeria are gas fired.
**10.3** Privatisation is not an end in itself; it is a means to achieving the much desired reforms in the power sector and its success is bound to engender competition, encourage entrepreneurship and foster economic growth. As experienced during the privatisation of the Nigerian telecommunications sector, existing and new business entities, both local and foreign, would seek to take advantage of the many opportunities in the Nigerian electric power sector. It is expected that joint ventures between local and foreign companies will be on the increase especially with the planned introduction of a local content policy\(^{27}\) by the Nigerian Electricity Regulatory Commission (NERC or the “Commission”) in the 3\(^{rd}\) quarter of the year 2013. Pursuant to Sections 32 (1) (a) and 96 of the *Electricity Reform Act*, NERC proposes to issue the Nigerian Electricity Regulatory Commission Regulations on National Content Development for the Nigerian Electricity Supply Industry 2013 (*the “Nigerian Electric Power Sector Content Regulations”*).

**10.6** It was, therefore, in furtherance of the foregoing, that the Commission developed the draft Nigerian Electric Power Sector Content Regulations, which has as its key objective the progressive increase of the “Nigerian content” of companies in the Nigerian electricity supply industry. In the said draft Regulations, “Nigerian content” is defined as “the quantum of composite value added to or created in the Nigerian economy, by a systematic development of capacity and capability through the deliberate utilization of Nigerian human, material resources, entrepreneurship and services in the Nigerian Electricity Supply Industry”.

**10.36** To obtain a business permit, an applicant is required to make a formal application to the NIPC, accompanied by the following documents...

*Registration with the Nigerian Electricity Regulatory Commission (NERC)*

\(^{27}\) The local content policy sets out guidelines to ensure that Nigerians are given first consideration in the areas of project execution, employment, training and technology transfer, amongst others.
10.47 Every company seeking to carry on business in the power sector is expected to, by virtue of the *Electricity Reform Act*, obtain a licence relevant to the business it desires to conduct. Broadly speaking licensing cannot be obtained for generation, transmission, distribution, bulk trading by one corporate entity. Also, with effect from March 2013, any person...