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KEY HIGHLIGHTS OF THE NIGERIA'S CLIMATE CHANGE ACT, 2021



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INTRODUCTION

In recognizing the need for an adequate response strategy to climate change, the President of the Federal Republic of Nigeria (''President Buhari'') on November 18, 2021, signed the Climate Change Act (the ''Act'') into law. The Act, amongst others, seeks to legislate Nigeria's efforts towards climate change adaption and mitigation and to enable the country to drive economic development in a sustainable manner.

The Act provides for a comprehensive regulatory and legal framework for achieving Nigeria's long-term climate goals, which encompasses a net-zero carbon emission target, adequate climate financing, environmental and economic accountability, and championing climate change actions.

This Newsletter examines the key provisions of the Act.



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KEY PROVISIONS

Objectives of the Act

The Act provides the legal framework for achieving low greenhouse gases emissions as well as promoting sustainable economic growth. These include mainstreaming climate change actions in line with national development priorities and facilitating the mobilization of finance, and other resources necessary to ensure effective action on climate change.

Nigeria has long maintained that it wishes to use its climate policies as part of wider measures to achieve low-carbon, resilient, and equitable economic growth. The Act, therefore, seeks to facilitate the intensive and complex cross-ministerial coordination of climate change action as well as the involvement of businesses and the civil society needed to achieve long-term climate objectives while also promoting climate-resilient and social-economic development in the country. The Act also sets out to establish a systematic approach for the country to identify the major climate risks and vulnerabilities facing the country.



The Act sets a target for year 2050-2070, for the attainment of a net-zero greenhouse gases emission in Nigeria. To achieve this aim, the prioritization of climate change adaption and finance, national climate resilience, and focus on other climate change combating policies are set out by the Act.

ESTABLISHMENT OF THE NATIONAL CLIMATE COUNCIL AND SECRETARIAT

The Act establishes the National Council on Climate Change (the "Council"), which is empowered to make policies on all matters relating to climate change in Nigeria. The Council, which is to be chaired by the President will be responsible for coordinating the implementation of sectoral targets and guidelines for the regulation of the

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greenhouse gases emissions and other anthropogenic causes of climate change; implementing Nigeria's Climate Change Action Plan; mobilizing financial resources to support climate change actions, administering a climate change fund, and developing a mechanism for a carbon tax in Nigeria.

Membership of the Council is broad and perhaps indicates the central role that it is expected to play in climate change and energy transition. The Council has several ex-officio members, including the Vice-President of Nigeria, the Ministers responsible for Environment, Petroleum Resources, Budget and National Planning, Justice, Mines and Steel Development, Finance, Agriculture and Rural Development, Power, Women Affairs, Transportation, Water Resources, the Director-General of the Secretariat, Governor of the Central Bank of Nigeria, the National Security Adviser, Chairman of the Nigerian Governors' Forum, and the President of the Association of Local Governments of Nigeria.

The Act also establishes a Secretariat, which will be the administrative, scientific, and technical arm of the Council, with its role being to advise and assist the Council in the performance of the Council's functions and duties.

National Climate Change Action Plan

The Secretariat, in partnership with the Ministries, shall formulate the Action Plan in every five-year cycle. The Action Plan will serve as a basis for identifying the activities aimed at ensuring that the national emissions profile is consistent with the carbon budget; reviewing levels and trends of greenhouse gases emissions; identifying strategic areas of national infrastructure requiring climate proofing; and prescribing measures and mechanisms for achieving Nigeria's climate goals. The first Action Plan shall be produced not later than 12 months from the commencement of the Act.

Similar to the carbon budget, the Action Plan shall be submitted through the Council to the Federal Executive Council (the "FEC") for approval. However, before

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submission to the FEC, the Action Plan must be published to the public for consultation for a period not less than 8 weeks before such submission to the FEC.

Carbon Budget

The Federal Ministry of Environment in consultation with the Federal Ministry of Budget and National Planning (the "Ministries") is expected to set the carbon budget for Nigeria, to keep average increases in global temperature within 2°C and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.

The Ministries are required to, periodically revise the carbon budget in line with Nigeria's NDCs, and every carbon budget, together with any revisions thereto, will be submitted for approval by FEC before such budget becomes effective.

The Climate Change Fund

The Act establishes a Climate Change Fund to be administered and maintained by the Council. The Climate Change Fund will be a depository of sums appropriated by the National Assembly for the running of the Council; fines and charges from private and public entities for flouting their climate change mitigations and adaptation obligations; carbon tax and emissions trading; and such other funds the Council may prescribe from time to time.

Monies in the fund are to be applied towards climate change advocacy and information dissemination; funding innovative climate change mitigation and adaptation projects; conducting assessments on climate change impact on vulnerable communities; and incentivizing efforts towards transiting to clean energy, and sustaining a reduction in greenhouse gases emissions.

OTHER PROVISIONS

Scope of the Act

The Act applies to Ministries, Departments, and Agencies of the Federal Government of Nigeria ("MDAs"), and to private and public entities in Nigeria. It further makes provisions for ensuring that private and public entities comply with stated climate change strategies, targets, and the National Action Plan.



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Private Entities

Under the Act, private entities include persons with functions of a private nature, bodies registered under the Companies and Allied Matters Act, private and public limited companies, unlimited companies, business names, partnerships, companies limited by guarantee, and incorporated trustees.

The Act sets a qualification threshold for such private entities, with respect to the mandated climate change obligations. Thus, by section 24 of the Act, all private entities with employees numbering 50 and above are required to put in place measures to achieve the annual carbon emission reduction targets in line with the Action Plan. They are also required to designate a climate change officer or an environmental sustainability officer, who shall submit to the Secretariat, through the State Director, annual reports on the entity's efforts at meeting its carbon emission reduction and climate adaptation plan.

A private entity that fails to meet its reduction targets shall be liable to a fine to be determined by the Council. The Council in determining such a fine, may rely on a system of Environmental-Economic Accounting with attention on the health impacts, impact on climate variation, and total damage to ecosystem services. The Council may also require a private entity that fails to comply with its climate change obligations, to prepare a report within a specified time, on its past and current actions, and future actions to be taken to secure performance with its climate change obligations.

Public Entities

The Act defines a public entity as an organization or body providing services to the public on behalf of the Federal Government of Nigeria. Under the Act, the Council may by regulations impose obligations relating to climate change on any public entity, from time to time; and vary or revoke any such obligations, where necessary.

Under the Act, any private or public entity that acts in a manner that negatively affects efforts towards mitigation and adaptation measures made pursuant to the Act commits an offense and is liable to a penalty to be determined by the Council. To incentivize private and public entities in fostering clean energy activities, the Action Plan will provide incentives for private and public entities that achieve their greenhouse gases emission reduction targets.



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MDAs

The Act mandates the MDAs to adhere to the annual carbon emission reduction targets, in line with the Action Plan and carbon budget. Any MDA that fails to meet its carbon emission reduction target will be subjected to a review, and its principal officers upon being found liable, shall be sanctioned, and where appropriate fined as determined by the Council.



CONCLUSION

The signing of the bill into law is very significant but plenty of work is still needed to translate this bold action into concrete policies that will document the emission profiles of the key sectors of the economy, produce credible de-carbonization pathways for the country, strengthen the resilience of the country against climate change impacts, and unlock trillions of dollars in climate investment needed to secure the transition.

To succeed in the task of fighting climate change, Nigeria will need a large scale of climate finance from both domestic and international sources. With the implementation of the country's NDC projected to cost about USD177 billion by 2030, only a body as high profile as the National Council on Climate Change can be expected to oversee the task of mobilizing such an amount in the context of dwindling oil revenue and a world that is moving away from fossil fuel. President Buhari has in fact put the cost of Nigerian green transition at trillions rather than billions of dollars and he is right.

The Act sends a strong positive message to the world that Nigeria understands the enormity and urgency of the climate change challenge and is serious to implement the net-zero carbon pledge made by President Buhari at COP26 in Glasgow.

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The firm's strong reputation is founded on its unique ability to provide innovative, competent, cost-effective and well-timed solutions to complex legal issues in a manner tailored to the client's individual needs. We adopt a visionary approach to client's service which enables us to anticipate industry challenges.

We are focused on delivering excellent bespoke service to our Clients and towards achieving this objective, we configure teams according to each Client's needs in a system that ensures that personnel with specialist knowledge are always assigned to their areas of specialization.

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