

# REGULATORY UPDATE

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## PRESIDENT ASSENTS THE ELECTRICITY ACT

In recent times, legislative actions have been taken to reshape the Nigerian Electricity Supply Industry (“**NESI**”) with a view to realign post-privatisation issues and expectations of stakeholders in the NESI. On 17th March, 2023, the Constitution of the Federal Republic of Nigeria (Fifth Alteration) Act, 2023 (“**Constitution Alteration Act**”) was assented into law by the immediate past President of the Federal Republic of Nigeria, Muhammadu Buhari. A key change in the NESI brought by the Alteration Act was amending the Concurrent List to empower States to generate, transmit and distribute electricity in areas covered by the national grid within their States as well as permitting States to make policies, laws and regulations for the power sector within their domains.

In furtherance of the goal of providing a framework to guide the NESI in its post-privatisation phase, President Bola Ahmed Tinubu on 9th June, 2023, assented to the Electricity Act, 2023 which repeals the Electric Power Sector Reform Act, 2005 (“**EPSRA**”). Amongst other things, the Electricity Act consolidates extant legislation and regulations in the NESI in a bid to provide an omnibus regulatory framework governing the NESI which would in turn, encourage private sector investment in the electricity industry.

Some of the key innovations in the Electricity Act include:

- The new law grants the Nigerian Electricity Regulatory Commission (“**NERC**”) greater autonomy as an independent regulator and substantially whittled down the powers exercised by the Minister of Power over NERC.
- It emphasizes the decentralisation of power similar to the Constitution Alteration Act. For instance, States will now be responsible for licensing generation, transmission, distribution, supply and sale of electricity activities, including the licensing of mini grid, Independent Electricity Distribution Network (“**IEDN**”) and Independent Electricity Transmission Network (“**IETN**”) provided that such a license does not permit the licensee to provide inter-state or transnational distribution of electricity in Nigeria. However, where the operation of such IEDN/IETN or electricity generation, transmission and distribution

undertaking within any State of the Federation relies on any part of the national grid for its operations or where the State has no legal and institutional framework in place for the regulation of mini-grids, IEDNs, IETNs or related electricity services, NERC will continue to assume jurisdiction over such States.

- Similarly, the new law provides the procedure for the transitioning of regulatory duties of NERC to a State electricity regulatory authority upon the enactment of a law to govern the State’s electricity market.
- The law mandates that from the commencement date of the law, the Minister of Finance shall introduce such tax incentives that are necessary to promote and facilitate the generation of electricity from renewable energy sources.

- Recognition of innovative business models like the Electricity Distribution Franchising (“**EDF**”) and IETN. The new law further recognises EDF as an activity that will be subject to tariff regulation and grants NERC the power to issue an IETN License where there is no existing transmission facility or the existing transmission facilities require reinforcement and/or refurbishment.
- Robust provisions on the criminalisation of electricity theft and other related offences as well as stipulating economic reflective penalties to deter offenders.
- The new law provides that the tenure or duration of licenses will be open-ended or valid for the duration stipulated in the license terms granted by NERC.
- Providing for investments in transmission networks by the Transmission Company Nigeria (“**TCN**”) and non-licensees.

Look out for our newsletter on the Electricity Act for a full analysis on the impact of the proposed new law on businesses and other stakeholders.

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