

REGULATORY UPDATE

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NERC INTENSIFIES COMPLIANCE

CHECKS ON NIGERIAN POWER SECTOR LICENSEES

The Nigerian Electricity Regulatory Commission (“**NERC**”) is an independent agency of the government saddled with the responsibility of licensing and regulating persons engaged in the businesses of generation, transmission, system operation, distribution, supply and trading of electricity in the Nigerian Electricity Supply Industry (“**NESI**”) amongst its numerous functions.

Upon the issuance of a license by NERC to a licensee, such licensee is required as part of its general duties under Section 64(1) of the Electricity Act 2023 (“**EA**”) to comply with the provisions of its license terms and conditions, regulations, codes, orders and other requirements issued by NERC. Similarly, all licensees are required by Section 72(5) of the EA to provide information to NERC on a periodic basis, in such form and detail as NERC may determine. The failure by a licensee to meet these compliance requirements under the law carries substantial sanctions under the newly enacted Electricity Act 2023.

This regulatory update intimates NESI licensees and stakeholders on their compliance obligations and the applicable sanctions for non-compliance in view of the current enforcement drive by NERC.

NERC INTENSIFIES COMPLIANCE ENFORCEMENT DRIVE

In view of the statutory compliance requirements on licensees that operate in the Nigerian power sector, NERC has been issuing compliance notices to various licensees these past months and intimating them of their obligations to file statutory/regulatory returns to NERC at specified intervals.

It should be noted that licensees are required to file detailed reports evidencing their compliance with the terms and conditions of their licenses along with the evidence of payment of their operating fees and other applicable fees to NERC by the specified due dates, from the dates of issuance of their respective licenses.

Furthermore, one condition of a typical NERC license is the requirement on the license to engage independent auditors or other experts to conduct compliance audits on an annual basis on the licensees and file the result of the compliance audits immediately upon completion of the audits with NERC.

Accordingly, it should be noted that by Section 215 of the EA, any person who (a) fails to comply with any order, rules, decisions, licence, permits, codes, standards, direction or any other subsidiary legislation issued under the EA, within such time as may be specified in the said subsidiary legislation; or (b) contravenes or attempts or abets the contravention of any of the provisions of the EA or any rules or regulations made thereunder, commits an offence and is liable to a fine of N500,000, or imprisonment for a term not more than three months or with both, and in the case of a continuing offence, an additional fine not more than N100,000 must be paid for every day the offence continues.

Furthermore, false declaration is also considered an offence and carries with it, a fine of not more than N200,000 or to imprisonment for a term not more than six (6) months or both upon conviction.

Finally, where the offence has been committed by a company, every principal officer of the company in charge of its business is deemed to have committed an offence and liable to be punished accordingly unless the officer can show that the offence was committed without his/her knowledge and that he or she was not negligent.

TAKEAWAYS

The punitive sanctions for non-compliance highlighted above have underscored the need for all licensees to take their compliance obligations more seriously. Licensees who have not complied with their statutory obligations are advised as a matter of urgency to commence the process of compliance without further delay.

On the other hand, licensees who are unsure on how to go about the compliance process especially as it relates to the nature of the information to be provided and the presentation of the information should speak to a professional advisor immediately.

You can contact us through the email address below for further guidance on this matter.

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