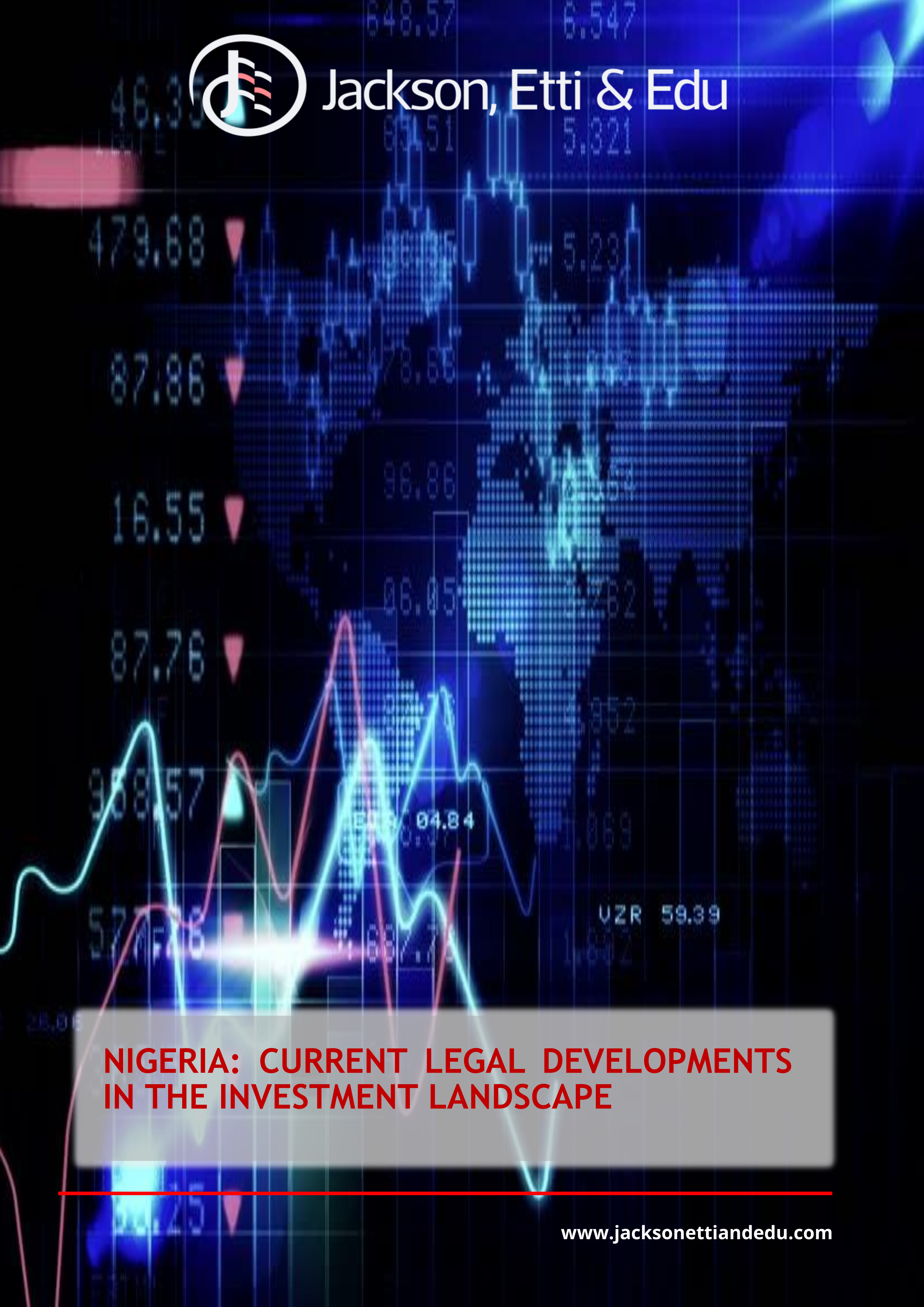

Jackson, Etti & Edu

NIGERIA: CURRENT LEGAL DEVELOPMENTS IN THE INVESTMENT LANDSCAPE

www.jacksonettiandedu.com

1. Boost to Competitive Markets

The President of the Federal Republic of Nigeria signed the Federal Competition and Consumer Protection Act into law in the first quarter of 2019 to promote competitive markets in the Nigerian economy and ensure welfare of consumers. This legislation repeals Consumer Protection Act Cap C25, Laws of the Federation of Nigeria 2004 and Sections 118 – 128 of the Investments and Securities Act Cap I24, Laws of the Federation of Nigeria 2014 (provisions relating to mergers, takeovers and acquisitions). The Act introduces a new consumer protection and merger control regime into Nigeria. Importantly, the Securities and Exchange Commission will no longer be responsible for review and approval of acquisition and merger transactions. It is envisaged that with the new competition regime, competition rules in Nigeria will be similar to that which is obtainable globally.

2. Enhanced Corporate Governance Regime

The Financial Reporting Council of Nigeria ("FRC") released the Nigerian Corporate Governance Code in 2018. The Code does not state an effective date, however, based on indications from the FRC, the understanding is that the Code will take effect in January, 2020. The Code seeks to institutionalise and encourage corporate governance amongst Nigerian companies and will apply to both private and public companies. The Code requires directors to compare global best practices in making decisions in additions to those required by the Companies and Allied Matters Act; rotation of audit firms and partners on particular engagements, requires board to adopt a whistle blowing framework. This Code will improve corporate governance practices amongst all companies and the quality of Nigerian corporate management and boards.

3. Improved Corporate Legislation

This legislation has been passed by both houses of the Nigerian National Assembly and awaits presidential assent. The Bill attempts to repeal the current Companies and Allied Matters Act Cap C20, Laws of the Federation of Nigeria, 2004 and re-enact same with new provisions. Amongst the new provisions include the introduction of limited partnerships and limited liability partnerships as a legal entity that may be formed in Nigeria; use of electronic signatures by directors, company secretary and officers of companies; the Bill allows companies to buy back its shares under certain circumstances; and incorporates corporate rescue provisions for companies in distress.

4. Expanded Tax Incentives for Pioneer Companies

Pioneer status incentive is a granted to companies considered to be within pioneer industries or providing pioneer

products/ services. The incentive includes exemption from company tax for a period of three (3) years which could also be extended for an additional two (2) years; and exemption from tax payable on dividend during the exemption period.

The Nigerian Investment Promotion Commission recently release a list of additional 27 pioneer industries/ products that will qualify for the pioneer status incentive. The new list includes e-commerce activities, software development and publishing, mortgage-backed securities, music production and REITS. The additional items are items that would be very attractive for private equity portfolio companies providing such services.

5. Financial Boost to Non-oil Exports

The Non-oil Export Stimulation Facility (“NESF”) was introduced by the Central Bank of Nigeria (“CBN”) in 2018 to diversify the revenue base of the economy, expedite the growth and development of the non-oil sector. It is believed that the establishment of NESF will attract new investments and encourage re-investments in value-added non-oil exports production and non-traditional exports; shore up non-oil export sector productivity and create more jobs; support export-oriented companies to upscale and expand their export operations.

The CBN has earmarked N5 Billion for NESF. Private equity portfolio companies within this space will be able to access loans with a tenor of up to 10 years while working capital/stocking facility shall be for one year with the option of roll-over once subject to the approval of the CBN. Repayment of loan is to be quarterly at an interest rate of 9% per annum. When compared to the prevailing lending rate of about 22% - 27%, this will take a lot of pressure of the revenue of eligible companies.

To be eligible to participate under the NESF, a company must be a non-oil export-oriented enterprise that is duly incorporated in Nigeria under the Companies and Allied Matters Act (CAMA); have verifiable export off-take contract(s) and Satisfactory credit reports from at least two licensed indigenous Credit Bureau.

6. CBN Anti-Money Laundering and Combating the Financing of Terrorism (Administrative Sanctions) Regulations, 2018

In April, 2018, the CBN release new AML/CFT sanctions regime. The new regime aims to ensure Nigeria's compliance with the Financial Actions Task Force's (FATF) recommendation 35 which indicates the need for effective, proportionate and dissuasive sanctions to those that fail to comply to AML/CFT requirements. It provides more stringent penalties on Bank board and senior management on violation of AML/CFT requirements. It is believed that the new rules will improve KYC requirement of banks and assist to curb money laundering activities in Nigeria.

7. Financial Inclusion

In 2018, the CBN, National Pension Commission ("PenCom") and the National Insurance Commission ("NAICOM") released new regulations focused on the enabling more financial inclusion. The CBN released Guidelines for Licensing and Regulation of Payment Service Banks in Nigeria while NAICOM released Guidelines for Microinsurance Operation in Nigeria. PenCom release Guidelines for Micro Pension Plan 2018 to create pension coverage for persons in the informal sector which constitute majority of the working population of Nigeria. The objective of payment service banks is to drive financial inclusion in rural areas by increasing access to deposit, payment and remittance products. Payment Service Banks in Nigeria will be able to maintain savings account and accept deposits, establish ATM and carry out remittances but will be unable to grant loans. Microinsurance seeks to stimulate growth in the insurance subsector especially the retail end of the market and drive insurance penetration. It is believed that with these guidelines there will be new investments and create a new ecosystem for financial inclusion in the financial services industry. Micro pension will seek to achieve the Pension Industry's strategic objective of covering 30% of the working population in Nigeria under the Contributory Pension Scheme by the end of 2024.

Key Contacts

Fola Olusanya
Partner
e: folaolusanya@jacksonettiandedu.com

Taiwo Adeshina
Partner
e: taiwoadeshina@jacksonettiandedu.com

Kunle Soyibo
Co-Head, Financial Services Sector
e: kunlesoyibo@jacksonettiandedu.com

Abayomi Adebanjo
Co-Head, Financial Services Sector
e: abayomiadebanjo@jacksonettiandedu.com

Jackson, Etti & Edu is a full-service law firm with a sector focus, rendering legal services to Nigerian, Pan-African and International clients in diverse jurisdictions. We have earned a reputation for delivering commercial advice across all the key sectors: energy & natural resources, fast moving consumer goods (FMCGs), financial services, health & pharmaceuticals, real estate & infrastructure, and technology, media & entertainment.

Further information about the firm is available at www.jacksonettiandedu.com. This is a publication of Jackson, Etti & Edu and is for general information only. It should not be construed as legal advice under any circumstances.

For further information, please contact us at jacksonettiedu@jacksonettiandedu.com

Jackson, Etti & Edu

RCO Court 3-5, Sinari Daranijo Street,
Victoria Island, Lagos, Nigeria.

t: +234 (1) 4626841/3, +234 (1) 2806989
e: jacksonettiedu@jacksonettiandedu.com

f: +234 (1) 2716889
www.jacksonettiandedu.com