

2023

ENERGY BRIEF



INTRODUCTION

2023 was in many respects a defining year for the Energy sector in Nigeria. The newly elected Bola Ahmed Tinubu-led government (Federal Government) wasted no time in declaring the era of petroleum subsidy in Nigeria over. The long-standing subsidy on the sale and distribution of Premium Motor Spirit (PMS) was officially removed as the financial cost of subsidy became unsustainable for the Federal Government.

On a positive note, the much-anticipated Dangote Refinery (the Refinery) located in Ibeju-Lekki was officially commissioned in May 2023. The Refinery is a 650,000 barrels per day (BPD) integrated refinery in the Lekki Free Zone. It is expected to be Africa's biggest oil refinery and the world's biggest single-train facility. The Refinery is expected to meet 100% of Nigeria's domestic requirement for refined products and have a surplus of each of these products for export. The Refinery has since commenced production of diesel and aviation fuel as it prepares to start producing PMS.



In the Power sector, 2023 saw the enactment of the Fifth Alteration Act (No. 17) which, among other things, expanded the scope of States' legislative powers in the concurrent legislative list to include generation, transmission, and distribution of electricity in areas covered by the national grid system. Subsequently, President Bola Ahmed Tinubu, GCFR, signed the Electricity Bill 2023 into law as Electricity Act, 2023 ("the Act"). By virtue of the Act, state governments can now enact laws, establish regulatory institutions, and undertake any activities for the purpose of facilitating power generation, transmission, and distribution within their borders.

Further along regulatory lines, 2023 saw the issuance of a plethora of regulations from the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Regulatory Authority (NMPDRA) to give full effect to the Petroleum Industry Act (PIA) 2021. The regulations issued by the NUPRC include The Nigeria Upstream Petroleum Measurement Regulations 2023, Production Curtailment and Domestic Crude Oil Supply Obligation Regulations 2023, Frontier Basins Exploration Fund Administration Regulations 2023, Nigeria Upstream Decommissioning and Abandonment Regulations 2023, The Gas Flaring, Venting and Methane Emission (Prevention of Waste and Pollution) Regulations 2023, to mention a few. The NMDPRA, on the other hand, enacted the Midstream and Downstream Petroleum Safety Regulations 2023, Midstream and Downstream Environmental Remediation Fund Regulations 2023, Gas Distribution Systems Regulations 2023, amongst others.

At **Jackson, Etti & Edu**, our Energy practice was very much involved in the unfolding events in the energy space as we provided legal advisory services to clients within the Energy Sector ranging from Power to Upstream, Midstream & Downstream Petroleum. Notable among these transactions are highlighted hereunder:

Rehabilitation and Maintenance of Crude Oil Terminal

We are advising a leading Energy company on the rehabilitating and maintenance of one of Nigeria's biggest crude oil terminals with a deal value of \$200,000,000.00 (Two Hundred Million Dollars). We drafted and negotiated the project documents consisting of Master Crude Handling Agreement, Crude Handling Agreement, Rehabilitation Agreement and Operation and Maintenance Agreement. We also advised on some of the legal and regulatory issues raised during the preparation of the agreements required to consummate the rehabilitation, operation, and maintenance of the onshore terminal. At the financing stage, we will draft, review, and negotiate the finance documents including the Term Sheet, Facility Agreement, Escrow Agreement and Security and Depository Documents.



Gold Mining Project

We advised a syndicate on an \$80 million senior term loan facility to be granted in respect of the development of new fields and mining lease assets by a gold exploration and development company. In the course of 2021, we advised on the structure of the transaction, reviewed and negotiated the term sheet and conducted a comprehensive due diligence exercise on the existing project.

The due diligence exercise consisted of a review of the existing Project and Financial Documents such as the EPC contract, the Deferred Payment Agreement, Offtake Agreements, Gold Purchase Agreement, among others; licenses and regulatory compliance documents such as the Mining Lease, Mineral Export License; and environmental compliance documents such as Environmental Impact Assessment Statement and HSE Policy, Community Development Agreement.

Gas Storage Infrastructure Project

We advised our Client (an Infrastructure Fund) on the grant of a N12 billion senior term loan facility to a Downstream Energy Company undertaking the construction of a 20,000 Metric Tonnes mixed liquefied petroleum gas ("LPG") storage terminal and related infrastructure. Our client's facility was obtained to finance the civil works, installation of equipment and procurement of trucks for distribution of LPG. Our legal support began with the provision of advisory services on the structure and the terms of the facility. Thereafter, we conducted a comprehensive due diligence exercise on the project and prepared a comprehensive due diligence report analysing the risks. We also negotiated and prepared the facility and security documents after which the security was perfected.



Crude Purchase Agreement



Advised on a 3000bpd (barrels per day) Crude Purchase Agreement facilitated through a Crude Swap arrangement for a two (2) year renewable term. The Crude Purchase Agreement was initially structured as a tripartite agreement to incorporate all the obligations, rights, and liabilities of the parties. However, it was restructured as two bilateral agreements – a Crude Purchase Agreement between our client and the seller and a Crude Swap Agreement between the seller and a contractor.

Sale of Heavy Fuel Oil

Advised a leading modular refinery on the sale of 72 million litres of Heavy Fuel Oil for onward exports outside the shores of Nigeria. Due to the complexities arising from the non-performance of the obligations in the executed Heavy Fuel Oil Sale and Purchase Agreement, we undertook a comprehensive review of the executed Agreement between the buyer and the seller. We noted that the way risk was allocated posed significant threat to our client's interest. Hence, we drafted an Addendum to the Agreement to impose further obligations on the buyer and secure our client's interest as well as mitigate the risks initially identified.



Local Content Compliance

Advised the Nigerian subsidiary of an international Power company on the reorganisation of the company to comply with the requirement for qualification as a Nigerian company under the Nigerian Oil & Gas Industry Content Development Act (Local Content Act) to service its clientele within the oil and gas industry. We advised on the options available to the company in meeting the Local Content requirements to be recognized as a Nigerian Company and drafted the necessary documentation to effect the change in the company's shareholding structure in alignment with the chosen option.



Refinery Development

We advised on the development of a 7,000 -10,000 bpd Modular Refinery. We provided legal support to the refinery project by advising on the proposed structure, contractual obligations, financing arrangements, technical and construction agreements and provided general legal advisory, regulatory and contractual support. Specifically, we undertook the drafting and review of Transaction Documents such as the Refinery Development Contract, Oil Refinery Turnkey Contract, Operation & Maintenance Contract, Shareholders Agreement, etc.

We developed a transaction structure that suits the proposed buy-out of the shares of one of the shareholders and provided legal advisory on share restructuring which led to the preparation of the Share Sales and Purchase Agreement, Share Transfer Instruments and alteration of Forms CAC 2 and 7 at the Corporate Affairs Commission.



Gas Procurement

We provided legal support to a client in its transaction of about US\$4M. We advised on the 10-year Gas Supply and Purchase Agreement for the supply of gas to our Client by the Nigerian Gas Marketing Company (NGMC) to power its recycling facility. Our legal support commenced with the negotiation of the transaction to contract drafting, review and ancillary support in respect of the Gas Sales and Purchase Agreement and the construction and commissioning of the gas delivery and metering facility.



Power Procurement

We advised the Nigerian subsidiary of an international Green Energy Company engaged in the production and delivery of clean technology and sustainable energy solutions. Under this Project, our client was to produce and deploy Solar PV technologies to power telecommunication masts located across over 360 sites in various parts of the federation. We supported with the renegotiation and redrafting of the Power Purchase Agreement to enhance its bankability and ease access to credit. We reviewed the key bankability provisions in the PPA, highlighted the issues stemming therefrom and undertook a redraft of the peculiar clauses.



Marginal Field Bidding Rounds and Award

We advised Two (2) successful participants in the 2020 Marginal Field Bidding Rounds. Upon the grant of their Awards, we supported with general legal advisory services and in particular on the structuring of the acquisition of additional interest in the assets, the drafting and preparation of the various Formation Agreements, Joint Operating Agreements and Shareholders Agreements for the SPVs incorporated for the development of the Marginal Fields.



CONCLUSION

As a firm, we expect that the climate of the Nigerian Energy Sector in 2024 will be characterized by innovative deployments and new business lines as the PIA comes into full implementation. We also anticipate increasing activities within the Petroleum Industry as a result of the operations of the Dangote Refinery and other national and modular refineries. It is equally expected that the Electricity Act will catalyze development of Power sector in a handful of States upon the establishment of their individual Electricity Markets. We look forward to the many opportunities year 2024 will bring and as a firm, we are ready to adapt to the dynamism of the industry and provide bespoke legal support services to players across the value chain of the Energy sector.

Key Contacts

For further information, kindly reach the key contact below:



TAIWO ADESHINA

Partner, Sector Head, Energy & Infrastructure.

+234 803 717 6741

E: taiwo.adeshina@jee.africa

Victoria Island

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

Tel

+234 (02) 014626841/3,
+234-1-2806989

Email

jee@jee.africa

Abuja

42, Moses Majekodunmi Crescent,
Utako, FCT, Abuja

Ikeja

1st floor, ereke house,
Plot 15, CIPM Avenue
CBD Alausa Ikeja
Lagos Nigeria

Accra

3 Emmause, 2nd Close
Akosombo House
Labone, Accra, Ghana
P.O. Box 14951
Accra, Ghana

Yaoundé

3rd Floor, Viccui Building
Apt. 15-16, Carr Street
New Town, Yaoundé
Cameroon

Harare

38 Clairwood Road,
Alexandra Park,
Harare,
Zimbabwe.