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Unlocking Investment Opportunities in the Nigerian Electricity Sector: An Analysis of the New Electricity Act 2023

Introduction:

The Nigerian electricity sector has long been regarded as an area of immense potential of unquantifiable magnitude; however, it is faced with significant challenges in terms of inadequate infrastructure, poor management of existing infrastructure, limited access to electricity, and regulatory complexities. Nigeria has the lowest access to electricity globally, with about 92 million persons out of the country's 200 million population lacking access to power, the Energy Progress Report 2022 released by Tracking SDG 7 has revealed¹. With a population of over 200 million people and a growing economy, Nigeria has a substantial demand for reliable and accessible electricity.

However, with the recent enactment of the New Electricity Act 2023, the landscape is set to change, unlocking a plethora of investment opportunities in the sector. This article aims to provide an analysis of the key provisions and implications of the new legislation, highlighting the potential for investors to participate in the growth and transformation of Nigeria's electricity industry.

The cheering news of the enactment² of the Electricity Act 2023 (the "Act") by the President³ of the Federal Republic of Nigeria lit a new phase in the Nigerian electricity sector, as On-Air Personalities of television broadcast and radio stations, print and online media channels reported it across the board. The media has been awash and inundated with dialogues, publications and views expressed by law firms, lawyers, policymakers and stakeholders in the power sector over the prospects of the Act and some of the innovative provisions of the

¹ <https://punchng.com/92-million-nigerians-lack-access-to-electricity-worst-globally-report/#:~:text=Nigeria%20has%20the%20lowest%20access,Tracking%20SDG%207%2C%20has%20revealed> Accessed 15th June 2023

² on the 9th of June 2023

³ Sen. Bola Ahmed Tinubu GCFR

Act. The Act repealed the Electric Power Sector Reform Act 2005, a forerunner legislation of the Act and has held sway as the primary law regulating the Electric power sector in Nigeria for nearly two decades and consolidates the laws relating to the Nigerian Electricity Supply Industry (NESI)

The new 'Electricity Act comprises of 233 sections. The explanatory Memorandum derived from the Act points out the focus of the new Act thus:

1. To consolidate the laws relating to the Nigerian electricity supply industry
2. To provide a comprehensive legal and institutional framework for electricity generation, transmission, system operation, distribution, supply, trading and consumer protection enforcement.
3. To provide for a holistic, integrated resource plan and policy that recognizes all sources for the generation, transmission and distribution of electricity
4. The integration of renewable energy into Nigeria' energy mix
5. To attract investments.

It is imperative from the above that the objective of the Act includes the following:

1. To accelerate the growth in power generation capacity by scaling up efficient power generation, transmission and distribution.
2. To attain the highest per capita power consumption in Africa with an innovative focus on new and efficient power generation technology.

The need for the development of a competitive electricity market

The development of a competitive electricity market is essential, particularly to accelerate the growth in power generation capacity.

The electricity Act provides thus:

“promote the development of a competitive electricity market⁴”

Establishing and progressing a competitive electricity market offer investors considerable advantages, opportunities and benefits. This competitive market structure catalyzes innovation, driving the emergence of novel solutions and encouraging technological advancements within the electricity sector. Simultaneously, it fosters infrastructure development, as the competitive

⁴Section 1 (f) electricity act 2023

landscape necessitates expanding and optimizing electricity generation, transmission, and distribution systems to accommodate diverse energy sources and meet evolving customer demands.

A competitive electricity market is crucial in attaining the highest power generation capacity and utilization.

Technological advancements have become the driving force behind numerous aspects of our lives and the global economy. Technology plays a pivotal role in shaping various sectors, industries, and societies in today's interconnected world. A competitive market fosters innovation and encourages the adoption of new technologies. The Act aims to improve the utilization of generated power through increased investment in new and efficient power generation technology. As electricity suppliers strive to outperform their competitors, they are driven to invest in research and development to gain a competitive edge. This creates an environment conducive to technological advancements, introducing cleaner and more efficient energy sources, advanced grid management systems, and energy storage solutions. Investors who support or develop such technologies can benefit from the growing demand for innovative solutions in the evolving electricity market.

A competitive market encourages investment in infrastructure development. As multiple suppliers compete to provide electricity services, enhancing and expanding the existing grid infrastructure is necessary to meet the demands of a diverse range of energy sources and customer preferences. Investors can capitalize on this demand by investing in grid expansion projects, transmission infrastructure, and smart grid technologies. Developing a robust and reliable electricity infrastructure creates long-term investment opportunities and the potential for steady returns.

Recognizing the significance of renewable energy in Nigeria's energy transition, the new act places a strong emphasis on the promotion and development of renewable energy sources⁵. Electricity generation from renewable sources includes solar energy, wind, small hydro, biomass and other renewable sources that may be developed. The legislation provides incentives, such as tax breaks and favourable tariffs, to attract investments in clean and sustainable energy generation.

Provision of protection for investors

The Act⁶ provides thus:

“Eliminate through policy and regulatory measures, barriers to investments in

⁵Ibid. Section 80
Section 1(j) of the Electricity Act 2023

generation, transmission, distribution, and related sub-sectors in the electricity industry in Nigeria”

The new legislation focuses on creating a stable and investor-friendly regulatory framework. It establishes transparent rules, procedures, and standards for market participants, ensuring predictability and reducing investment risks. The act also provides safeguards for investors, including mechanisms for dispute resolution, protection of intellectual property rights, and guarantees for repatriation of funds. These provisions enhance investor confidence and mitigate concerns related to policy uncertainties and legal disputes.

Licensing and investment opportunities

The electricity sector in Nigeria has undergone privatization in recent times. The government's decision to privatize the electricity industry was driven by the recognition that private sector participation could bring in much-needed capital, expertise, and innovation to address the longstanding challenges the sector faces.

I. Independent System Operators⁷: The Act establishes the concept of Independent System Operators (ISOs). ISOs are system operators licensed by the Commission (presumably the Nigerian regulatory authority) under Part IV of the Act.

As the successor company, the Transmission Company of Nigeria Plc (TCN) is responsible for issuing the license that covers transmission service provider, market, and system operation functions. TCN, following its approval and the directives of the Commission, must take the necessary steps under the Companies and Allied Matters Act to incorporate an entity called the ISO. The ISO can be structured as a company limited by shares or any other ownership and governance structure specified by the Commission. Once incorporated, the ISO must apply to the Commission for a license as an ISO. The ISO's license will enable it to perform market and system operation functions as specified in the Act, its license, and any additional terms and conditions directed by the Commission.

Licensing an Independent System Operator (ISO) to generate electricity in Nigeria is a significant step towards improving the efficiency and reliability of the country's power system. An ISO plays a crucial role in ensuring the seamless operation and coordination of the electricity grid, essential for meeting the growing demand for electricity and optimizing the utilization of generation resources.

⁷Ibid, Section 323, 15

2. Authorized persons to generate and transmit electricity⁸:

a. Unless granted a license under the provisions of the Act or deemed to have been issued one, no person or entity can engage in certain activities related to the electricity sector. These activities include:

b. Electricity Generation (excluding captive generation): Any individual or entity that intends to construct, own, or operate electricity generation facilities, except for captive generation, must obtain a license. Captive generation refers to producing electricity for personal use or a specific facility.

c. Electricity Transmission: Engaging in the transmission of electricity, which involves the movement of electricity from generation sources to distribution networks, is restricted without a license. This activity typically involves operating and managing high-voltage transmission lines and associated infrastructure.

d. Electricity Distribution: Operating the distribution networks responsible for delivering electricity to end consumers requires a license. Distribution networks encompass the infrastructure, such as power lines, substations, and transformers, that facilitates the local delivery of electricity.

e. Electricity Supply: The business of supplying electricity to end consumers, such as residential, commercial, or industrial customers, is subject to licensing. Entities in electricity supply purchase electricity from generators or wholesalers and deliver it to consumers through distribution networks.

f. Electricity Trading: Engaging in the trading of electricity, which involves buying and selling electricity in the market, is restricted unless a license is obtained. Electricity traders typically participate in wholesale electricity markets, purchasing electricity from generators and selling it to distribution companies or other market participants.

g. System Operation: The operation of the electricity system, which includes managing the flow of electricity, maintaining system stability, and ensuring reliable supply, requires a license. System operators monitor and control the electricity grid to balance supply and demand.

⁸Ibid, Section 63

The Act also provided exceptions to obtaining a license for certain activities in the electricity sector. Here's an explanation of the key points:

1. **Exemption for Small-Scale Generation and Distribution:** A person or entity is allowed to construct, own, or operate an undertaking for generating electricity not exceeding 1 megawatt (MW) in total capacity at a site or an undertaking for electricity distribution with a capacity not exceeding 100 kilowatts (KW) in total capacity at a site. The capacity limits specified may vary as determined by the Commission. A license is not required for these specific small-scale generation or distribution activities in such cases.

2. **State-Enacted Laws for Authorized Persons:** A person or entity may construct, own, and operate an undertaking for the generation, transmission, distribution, supply, and sale of electricity, including the construction, ownership, and operation of mini-grids, IEDN/IEDNOs (Independent Electricity Distribution Networks/Operators), or IETN/IETNOs (Independent Electricity Transmission Networks/Operators) within a State. This is permitted under a law enacted by the House of Assembly of that State, as provided in section 2(2) of the Act.

However, it's important to note that such exemptions are subject to certain limitations. The exemption does not allow the licensee to distribute inter-state or trans-national electricity in Nigeria. This means that the authorized activities must be confined within the boundaries of the State in which they are permitted. These exemptions recognize the potential for small-scale generation and distribution projects and allow for state-level regulations and initiatives within the electricity sector. It aims to promote decentralized electricity generation and distribution and empower states to enact laws to facilitate such activities within their territories

1. **Licensing by State Governments⁹:**

The responsibility for granting licenses for mini-grids, IEDN/IEDNOs, and IETN/IETNOs, as well as providing the operational framework for these licensees, lies with the State Electricity Board or any State authority.

“EDNs and IEDNOs¹⁰” means independent electricity distribution network and independent electricity distribution network operators respectively, recognized under section 63(2)(b) and (7) of this Act;

“ETN and IETNOs” means independent electricity transmission network and independent electricity transmission network operators respectively, recognized under section 63(2)(b) and (7) of this Act;

⁹ Ibid, Section 63(7)

¹⁰ Ibid Section 323

However, there are certain conditions under which the Commission retains regulatory powers over these entities in any state of the Federation:

1. **Absence of Legal and Institutional Framework:** If a state needs a proper legal and institutional framework for regulating mini-grids, IEDNs, IETNs, or related electricity services, the Commission retains regulatory authority over these entities operating within that state.
2. **Reliance on the National Grid:** If the operation of IEDN/IEDNOs, IETN/IETNOs, or electricity generation, transmission, and distribution undertakings within a state depends on any part of the national grid, the Commission maintains regulatory powers over them.

The State Electricity Board or State authority is responsible for granting licenses and establishing operational frameworks for mini-grids, IEDN/IEDNOs, and IETN/IETNOs within their respective states; the Commission retains regulatory powers in states where there is no appropriate legal and institutional framework for regulation or if the operations of these entities rely on the national grid. This ensures consistent regulatory oversight while allowing states to control investment in electricity utilities within their territories.

Types of licenses¹¹

1. Generation Licenses
2. Transmission Licenses
3. System Operational Licenses
4. Distribution and Supply Licenses
5. Trading Licenses

Investment Opportunities

Investors can explore various avenues to invest in the electricity sector under the new Electricity Act. Here are some standard investment options:

1. **Power Generation Projects:** Investors can consider investing in power generation projects, which involve constructing, owning, and operating power plants. These projects can include conventional power plants (such as gas-fired or coal-fired plants) or renewable energy projects (such as solar, wind, or hydroelectric power). Investors can partner with project developers or initiate their projects.
2. **Transmission and Distribution Infrastructure:** Investments can be made in

¹¹ Ibid, Section 65-69

constructing, upgrading, or maintaining transmission and distribution infrastructure. This may include investing in expanding transmission lines, substations, or distribution networks to improve the efficiency and reliability of electricity transmission and distribution.

3. Independent Power Producers (IPPs): Investors can participate as Independent Power Producers by entering into Power Purchase Agreements (PPAs) with off-takers, such as distribution companies or industrial consumers. IPPs generate electricity and sell it directly to consumers or utilities under long-term contracts.

4. Renewable Energy Projects: Given the increasing focus on renewable energy, investors can explore opportunities in renewable energy projects. This can involve investing in solar farms, wind farms, biomass projects, or other renewable energy technologies. These projects can contribute to the diversification of the energy mix and promote sustainable development.

5. Electricity Trading: Investors can participate in electricity trading activities within the market. This involves buying and selling electricity contracts or participating in spot market transactions. Investors can establish electricity trading companies or collaborate with existing market participants to capitalize on market opportunities.

6. Energy Efficiency Solutions: Investments can be made in energy efficiency solutions, such as implementing energy management systems, offering energy-efficient technologies, or providing energy consulting services. These investments can contribute to reducing energy consumption and optimizing energy use in various sectors.

7. Research and Development: Investors can support research and development initiatives in the electricity sector. This can involve funding research projects, collaborating with research institutions, or establishing innovation centres to drive technological advancements, grid optimization, and the adoption of new energy solutions.

Conclusion

Nigeria presents a highly lucrative investment prospect in the renewable energy sector, specifically focusing on wind, solar, and hydroelectric power. The recent enactment of the electricity act has demonstrated the government's proactive approach to establishing a favourable climate for investors interested in renewable energy projects. These measures encompass a range of attractive policies and incentives, such as feed-in tariffs, subsidies, tax benefits, and the grant of licenses as provided in the Electricity Act¹².

Moreover, the government has launched targeted programs to improve electricity access in rural areas. These initiatives address a crucial requirement and offer additional incentives for private investors to create innovative off-grid and mini-grid solutions that integrate renewable energy technologies. By actively participating in such projects, investors can tap into a rapidly expanding market while positively impacting local communities.

Furthermore, introducing the electricity act has effectively dismantled the monopoly previously observed within the electricity sector, ushering in a new era of competition and diversification¹³. This transition opens up a wide array of exceptional opportunities for foreign investors, companies, and individuals to engage in Nigeria's electric power generation business. Anticipated developments include

- a surge in joint ventures,
- the establishment of new companies, and
- The expansion of existing Generation Companies (GenCos) and
- The expansion of Distribution Companies (DisCos) through the grant of licenses stipulated by the electricity act.

Investing in Nigeria's renewable energy sector offers foreign investors the potential for attractive returns on their investments and enables them to leverage the country's abundant renewable energy resources. By doing so, investors can contribute to the sustainable development goals of Nigeria and the global community. Additionally, forging strategic partnerships and harnessing foreign direct investment will empower entities to establish a formidable presence and provide exceptional consumer services in this thriving market.



¹² Electricity Act 2023

¹³ Ibid.

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