THE ENERGY MERGERS & ACQUISITIONS REVIEW

THIRD EDITION

Editors
Sean T Wheeler, Kristin Mendoza, Roald Nashi
and Robert Fleishman

THE LAWREVIEWS

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PREFACE

Energy underpins our economy and is central for economic growth globally. Energy makes possible the investments, innovations and new industries that are the engines of jobs, growth and shared prosperity for entire economies. Although fossil fuels remain critical energy resources across the globe, the energy landscape is transforming, and renewable energy continues to play an increasingly important role in helping countries develop modern, reliable and resilient energy systems, and address environmental and climate concerns.

Energy M&A is important in facilitating innovation, technological change, growth and access to resources in the energy industry. Effective energy M&A practitioners must address a broad range of legal and other issues that arise in all M&A transactions, as well as issues unique to the energy space. As in the first two editions of this book, this third edition describes key energy-related M&A issues in a number of countries.

Each year, Oxford Languages typically identifies a 'word of the year'. In its 2020 annual report, it noted that the English language (like all of us) had to adapt rapidly and repeatedly, and declared that 2020 was a year that could not be neatly accommodated in a single word. Oxford Languages concluded that what was 'genuinely unprecedented this year was the hyper-speed at which the English-speaking world amassed a new collective vocabulary relating to the coronavirus, and how quickly it became, in many instances, a core part of the language'. Unsurprisingly, the coronavirus pandemic in 2020 had a huge negative impact in energy M&A. In 2021, however, there has been an uptick in energy M&A.

Kirkland & Ellis is a global law firm with over 350 lawyers involved in energy and infrastructure matters. In 2018, we thought it was time for the firm to take a larger thought leadership role in this space and began working with The Law Reviews to launch this series of volumes. We are pleased to continue serving as global editors.

We thank all the lawyers at Kirkland who developed the US chapter. We would also like to thank the contributing authors from Argentina, Brazil, Hungary, Nigeria, the Philippines and Singapore for their efforts in helping to put together this volume.

We hope our readers will find this to be a useful resource as they navigate the changing landscape of energy M&A.

Sean T Wheeler, Kristin Mendoza, Roald Nashi and Robert Fleishman
Kirkland & Ellis LLP
Houston, New York and Washington, DC
November 2021

Chapter 4

NIGERIA

Gbolahan Elias, Okechukwu J Okoro and Emeka Ezekwesiri[1]

I OVERVIEW

There are two broad sub-markets at issue in Nigeria: the oil and gas sub-market and the electric power sub-market. Each sub-market has a separate regulator. While the Nigerian Electricity Regulatory Commission (NERC) caters for electric power, the newly enacted Petroleum Industry Act 2021 (the PIA) created two separate regulators for the oil and gas sub-market: the Nigerian Upstream Regulatory Commission (the Commission), which regulates the upstream sector (petroleum exploration, prospecting and mining), and the Nigerian Midstream and Downstream Regulatory Authority (the Authority), which regulates the midstream and downstream sectors (petroleum refining, storage, transportation, distribution and sale of refined petroleum products). Each of the sub-markets caters primarily to different major buyers: foreign traders for oil and gas, and domestic consumers and business people for electric power. The contrast between the two markets permeates this chapter.

Fluctuating international prices and climate change concerns about oil and gas on the one hand, and low prices for electric power domestically on the other hand, mean that acquisition financing has been harder to access than it was previously. The fluctuating prices for oil and gas are functions of the foreign markets, the covid-19 pandemic and increasing international commitment towards green energy. The low price of domestic electric power is a function of Nigerian regulation.

The enactment of the PIA has introduced far-reaching changes in the Nigerian oil and gas sub-market. The PIA introduced new institutional, regulatory, licensing and fiscal regimes for the Nigerian petroleum industry. Actors in the Nigerian petroleum industry (regulators and private and public participants) are currently transitioning to the new PIA regime.

On the M&A front, the oil and gas market has been especially active because the largest international oil companies (IOC) in this market have been carrying out a programme to divest a range of onshore acreage assets with a view to focusing on larger offshore acreage assets. With the recent conclusion of the marginal field bid round, more M&A activities are expected in the petroleum industry. The electric power market has also been active with the federal government programme to sell several generation companies. The divestment and privatisation programmes are winding down and will run their course soon.

Also, there have been owners selling and would-be buyers bidding to buy or trying to sell oil and gas assets upstream, midstream and downstream. The success of the divestment

1 Gbolahan Elias is a partner, Okechukwu J Okoro is a partner and Emeka Ezekwesiri is an associate at G Elias & Co.

programme mentioned above has prompted other IOCs to initiate their own acreage divestment programmes. Interest in buying and selling electric power companies also remains strong, although few deals have actually been concluded.

II YEAR IN REVIEW

Although the covid-19 pandemic, with its attendant lockdown period, affected the market during 2020, significant economic recovery has been made in 2021. Within the year in review, the federal government of Nigeria, through the Department of Petroleum Resources (DPR), completed the marginal field bid round for indigenous companies and investors interested in participating in exploration and production business in Nigeria. A total of 57 oil fields, spread across land, swamp and shallow water terrains, were awarded to 161 successful bidders. There were joint awards of most oil fields to two or more unrelated bidders. Without a formal consortium arrangement preceding the award, the joint awardees are currently negotiating joint structures to undertake the development of the relevant oil fields.

In the year under review, the federal government, through the DPR, set up the Nigerian Upstream Cost Optimisation Programme. The programme is aimed at reducing the average cost per barrel to make Nigeria an attractive destination for oil and gas investment. The President also commissioned the integrated resource complex, the National Oil and Gas Excellence Centre (NOGEC). NOGEC has five units under it, namely:

a Search, Rescue and Surveillance Command and Control Centre;
b the National Improved Oil Recovery Centre;
c the Oil and Gas Alternative Dispute Resolution Centre;
d the Oil and Gas Competence Development Centre; and
e the Integrated Data Mining and Analytics Centre.

These centres are expected to drive data optimisation, effective and efficient dispute resolution and cost reduction in the oil and gas industry.

The enactment of the PIA is perhaps the most significant development in the Nigerian petroleum industry in more than two decades. The legislation, which is divided into five chapters and comprises 319 sections, is expected to drive the development of Nigeria's oil and gas sector. The PIA has:

a introduced much needed clarity into the regulatory framework for the sector;
b overhauled the fiscal regime for all companies in the petroleum industry;
c provided a regulatory framework for host community relations;
d introduced a new licensing regime; and
e commercialised the government-controlled Nigerian National Petroleum Corporation (NNPC), among other notable changes.

The PIA particularly demonstrates Nigeria's renewed resolve to develop its gas infrastructure and the domestic gas market.

In the year under review, Shell Petroleum Development Nigeria Limited, Total E&P Nigeria Limited and ENI completed the divestment of a combined participating interest of 45 per cent in OML 17. The asset was acquired by an indigenous company, Heirs Holdings, through its affiliate Transnational Corporation of Nigeria plc (Transcorp). The deal is reportedly worth circa US$1.1 billion. Other major M&A deals in the Nigerian oil and gas industry within the year include Rainoil's acquisition of a 61 per cent equity stake in Eterna Oil. Also, Ardovo Plc completed the acquisition of a 100 per cent equity stake in Enyo, making Ardova plc Nigeria's largest indigenous publicly listed downstream company.

Major M&A deals concluded and announced in the recent past include in the downstream (e.g., Forte Oil), midstream (e.g., Seven Energy) and upstream (e.g., Transcorp) oil and gas sub-sectors, and also in the thermal (e.g., Transcorp Afam) and solar power (e.g., NEOT) sectors. We are aware of several deals that are still being negotiated but not announced in every one of the foregoing areas, as well as for electric power distribution companies. Further, in the immediate past year, the federal government of Nigeria sold its interest in Afam Power plc and Afam Three Fast Power Limited (one of the six successor generation companies incorporated following the unbundling of the Nigeria power sector) for 105.3 billion naira to Transcorp Power Consortium.

Nigeria now has a dedicated, sector-neutral merger control regulator in the Federal Competition and Consumer Protection Commission (FCCPC), established under the Federal Competition and Consumer Protection Act (2018) (FCCPA). Before the FCCPA, the capital markets regulator doubled as the merger control regulator, and changes of control that were either indirect or occurred at the level of foreign parent companies rather than within a Nigerian company were not regulated under Nigerian general merger control law. All this has now changed. Further to the FCCPA, the FCCPC exercised its powers thereunder and issued the Merger Review Regulations 2020 on 23 November 2020 (the Regulations). The Regulations:

a provide the requirements for the approval of a merger by the FCCPC;
b outline the jurisdictional limits of mergers under the FCCPA;
c clarify the process for merger notification and handling of notified mergers;
d provide guidance on the regulatory review process; and
e prescribe the procedure for remediation and disposition of notified mergers.

Also within the past year, the President of Nigeria, Muhammadu Buhari, signed into law the Finance Act 2021. The Finance Act amended the existing tax regime in Nigeria with an impact on M&A transactions. The Finance Act has clarified the uncertainties around M&A deals between related entities. The Finance Act provides for tax exemption for corporate reorganisation between related parties. However, the conditions for the tax exemption are that the entities must have been so related for at least 365 days prior to the date of the reorganisation, and that the acquirer will not dispose of the asset within 365 days following the date of the reorganisation. Failure of any of the above conditions means the transaction will be subject to applicable taxes. The Finance Act has also expanded the scope of 'instruments' liable to stamp duty to include electronic documents. With this, M&A documents relating to Nigerian entities that are assessed electronically in Nigeria will attract stamp duty. The Finance Act also amended the new Companies and Allied Matters Act 2020 (the new CAMA) to cater for the treatment of unclaimed dividends in Nigeria. Dividends of a public quoted company that remain unclaimed for a period of six years or more are to be transferred to the Unclaimed Funds Trust Fund established under the Finance Act. The dividend becomes a debt due from the government to the dividend owner. In addition to the Finance Act, the new CAMA brings major changes to the M&A landscape in Nigeria. Under the instant companies' law regime:

a private companies are mandated to restrict transfer of their shares;

b companies are restricted from acquiring their own shares (share buyback and repurchase); and
c financial assistance to shareholders and prospective shareholders is prohibited.

All of these have changed under the new CAMA. In addition, the new CAMA provides for the disclosure of significant control and substantial shareholdings in companies by notice to the Corporate Affairs Commission (the Nigeria companies' registry).

III LEGAL AND REGULATORY FRAMEWORK

Energy M&A deals need both sector-regulator approval (the Commission (for upstream petroleum operations), the Authority (for midstream and downstream petroleum operations) and NERC (for the electric power sector)) and sector-neutral merger control approval from the FCCPC to be concluded. General merger control approval is needed for all energy sector mergers where the combined annual turnover or assets of the acquirer and the target is worth the equivalent of US$2.4 million, or where the target is worth the equivalent of US$1.2 million in either turnover or assets. This is the position under the FCCPA whether the merger is structured as an acquisition of shares or otherwise.

The approval of the stock exchange and the securities regulator is also needed where merging companies are either listed or just public companies. The focus of these approvals is on making full disclosure to investors, while that of the general merger control regulator is on protecting competition and consumers.

A simple asset or shares acquisition may be effected purely by contract. Where liabilities (not only assets) are to be transferred, the parties may achieve their aims either by contract with the consent of the creditors (novation) or by court order where the court is satisfied that the interests of the creditors will not be unfairly prejudiced.

The statute that sets out the mechanism for effecting a transfer of liabilities by court order is the new CAMA. It empowers the courts, following a meeting of the shareholders and the approval of a 75 per cent majority, to 'sanction an arrangement' whereby the assets and liabilities of two or more companies may become vested in only one company.

The approval of the sector regulators is also needed both by statute and by regulation. The Minister for Petroleum Resources, acting on the recommendation of the Commission, must approve acquisition transfers, whether of acreage, assets or operating licences in petroleum companies. Where the assets are marine vessels or licences to operate them, disclosure to the shipping regulator is needed, but not its consent. Similarly, NERC's approval is required for acquisition and transfers of shares, licences or assets of companies holding NERC licences. Every company operating assets generating more than 1MW or running a distribution network with more than 100KW capacity or transmission network must have a NERC licence.

Clearance from the tax authorities is also needed in respect of companies' income tax where there is to be a merger or an acquisition by transfer of assets.

IV CROSS-BORDER TRANSACTIONS AND FOREIGN INVESTMENT

Both foreign and domestic players have been active in the oil and gas and electric power sub-markets. For example, of the deals mentioned in Section II:
a the divesting parties in the Transcorp are all foreign IOCs;

b the parties in both the Forte Oil and the Ardova plc deals were Nigerians;
c Seplat is Nigerian but listed in London and acquired Eland, which is a UK company listed in the UK;
d the other acreage-divesting IOCs are all foreign; and
e NEOT is European.

There are no prohibitions against foreign involvement in the energy market in Nigeria. Foreign nationals may fully own, invest and participate in Nigerian companies except enterprises producing arms and ammunition; narcotics and psychotropic substances; and military and paramilitary, police, customs, immigration and prison service uniforms and accoutrements. However, in practice, the now defunct DPR does not give more than 40 per cent of the equity (as distinct from economic) interest in an oil field to a foreign-controlled company; and will give that 40 per cent to the foreign-controlled company only where that company has incorporated a subsidiary in Nigeria for the purpose. We expect that the new regulators will also continue in this tradition.

Further, a foreign company can invest in but cannot operate assets in Nigeria directly and in its own right. It must incorporate a company in Nigeria to do so (except in very rare cases where it gets special exemption from registration as an invitee to Nigeria by the federal government to execute any specified individual or loan project, or as an engineering expert engaged in an individual specialist project).

The Nigerian company must then be registered with the Nigerian Investment Promotion Commission (NIPC) before it starts operations. The NIPC's prevailing practice is to decline to register businesses in which foreign nationals do not invest at least 10 million naira.

However, the Nigerian Oil and Gas Industry Content Development Act 2010 (LCA) provides for exclusive consideration to be given to Nigerian indigenous service companies in the award of certain contracts in the oil and gas sector.[2] The LCA also provides for preferential rights to be given to Nigerian independent operators in the award of oil blocks, oil field licences and oil lifting licences.[3] While the terms 'Nigerian indigenous service company' and 'Nigerian independent operator' are not defined, a Nigerian company is defined under the LCA as 'a company formed and registered in Nigeria in accordance with the provision of the Companies and Allied Matters Act with not less than 51 per cent equity shares held by Nigerians'. The LCA does not exclude companies registered in Nigeria with majority foreign participation from participating in the Nigerian oil and gas sector. The LCA only provides that companies that are majority-owned by Nigerians will have priority over such companies regarding obtaining rights to oil leases, oil lifting, oil trading, providing training services and funding from the government and third parties.

Similarly, under the NERC Regulation on National Content Development for the Power Sector 2014 (the Regulation), licensees under the Electric Power Sector Reform Act 2005 are to ensure that qualified Nigerian companies are given first consideration for the supply of goods and works, and for the provision of services in the electric power sector. The term 'Nigerian company' is not defined under the Regulation; however, a Nigerian operator is defined as 'a company incorporated in Nigeria with the object of providing goods and services for the Nigerian Electricity Supply Industry'.

2 Local Content Act, Section 3(2).
3 Local Content Act, Section 3(1).

Parties to M&A transactions are free to choose the governing law and dispute resolution clauses for their transaction documents. The parties' choice of law to govern the transaction documents would be upheld by Nigerian courts in proceedings in relation to all matters relating to the construction, validity and performance of the transaction. Such choice of law will be upheld by Nigerian courts, provided the choice of law was not made in bad faith or contrary to mandatory Nigerian statutes or Nigerian public policy.

V FINANCING

Loans, bonds, equity offerings (whether private or public) and share exchange, cash holdings and sales have all been used extensively to pay for energy sector M&A transactions. This has been so across the various areas of the sector. Existing cash holdings are an obvious way to pay for smaller acquisitions.

Some electric power privatisation acquisitions are paid for by the parent company of the acquirer issuing bonds and shares to put in place a 'war chest' for the acquisition. It is also not unusual for acquirers to take out loans and issue bonds to pay off or pay down the creditors of target distressed companies as part of the process of acquiring them. Three points deserve further comment.

First, the old common law rules against a company financing the acquisition of its own shares have now been revised by the new CAMA. Where an acquisition is to be financed with debt, there will typically be an acquisition vehicle that will be the borrower of record and hold shares in the target, and that the target's assets may or may not be used as collateral. Most privatisation energy acquisitions were financed using such a structure. The use of the target's assets as collateral were absolutely prohibited under the previous financial assistance rule. However, the new CAMA has modified the financial assistance rule by the following actions:

a defining financial assistance as 'a gift, guarantee, any form of credit or any other financial assistance given by a company, the net assets of which are thereby reduced up to 50 per cent or which has no net assets', thereby allowing assistance that does reduce the target's company's net assets by up to 50 per cent; and

b allowing private companies to give financial assistance where:
- the net assets of the company are not reduced and where such net assets are reduced, the assistance is provided out of distributable profits;
- the assistance is approved by special resolution of the company in a general meeting; and
- the directors of the company or holding company make a statutory declaration before the financial assistance is given.[4]

Second, the use of forward sale financing structures to pay for oil and gas sector acquisitions is emerging. These structures were originally developed in project contexts. Under the structure, the acquirer would sell future oil production forward, get a large payment immediately of much of the price and apply that to pay for the acquisition.

Third, careful tax planning is critical to optimal structuring. At the risk of oversimplification, it is broadly correct to say that acquisitions of shares and formal mergers are more tax-efficient than asset acquisitions with respect to capital gains tax, value added tax and stamp duty rates. Further, the rules governing official clearance for the adjustments to be

4 Section 183 of the new CAMA.

made to companies' income tax on the commencement and cessation of business apply to all oil and gas companies and electric power companies. On the face of the legislation, capital gains tax at 10 per cent, value added tax at 7.5 per cent and stamp duty on sale documents for acreage at 1.5 per cent are chargeable on asset sales transactions. Both compliance with these rules and enforcement of the rules have been patchy. Formal mergers are exempt from capital gains tax where the disposal of assets is after one year of the merger process and there is no subsequent disposal of assets within one year of the merger. Share sales are exempt from capital gains tax and attract only nominal stamp duty. These rules present obvious opportunities for tax planning.

VI DUE DILIGENCE

Undertaking a due diligence exercise is one of the essential aspects of entering into an energy M&A transaction. Legal, financial and environmental due diligence are commonly conducted in energy M&A transactions in Nigeria. There are no peculiarly Nigerian considerations on project and asset evaluations.

The pertinent aspects of the legal due diligence are usually in respect of the corporate structure, regulatory (including environmental) compliance, security arrangements over assets, existing litigation or arbitration. The Commission and Authority are required under the PIA to maintain registers of memorials and proprietary interests in upstream acreage. The registers are to show every extension, transfer, surrender, revocation, exemption, relinquishment, change of address, change of name, security interest and any other matter affecting an interest. The register is conclusive evidence of the conditions of a lease, licence, permit or authorisation disclosed in it. A starting point of legal due diligence for merging parties will be the registers. Depending on the target company, a search may have to be conducted at the lands registry, Corporate Affairs Commission (CAC) and other relevant registries. Other aspects of legal due diligence in energy M&A transactions include:

a material contracts;
b assets;
c bank and pension liabilities;
d employment contracts;
e intellectual property and technology rights;
f pending and potential litigations and claims; and
g tax and other statutory and regulatory compliances (including environmental impact assessment approvals and work programme approvals in the oil and gas sector).

It is crucial to conduct the above due diligence enquiries prior to the consummation of M&A transactions, as this will help the purchasing company to assess and provide possible solutions to mitigate legal risks and obligations identified.

It is advisable to ensure that the target company and its shareholders make representations and warranties in the transaction documentation to the effect that there are no existing liens and regarding the authority and title to, and tax of, critical assets. The target company and shareholders should also undertake to indemnify the acquirer in the event of a breach of any of the representations and warranties, and as to other commercial matters that the parties may agree.

However, an acquirer cannot completely eliminate the risk that there may be prior security interests, because there are security interests that are not required by law to be registered at the CAC (e.g., charges over shares, and pledges of goods), and prior registered interests may not be disclosed in the course of a search owing to possible administrative lapses at the relevant registry.

This is not unusual under company charges registration regimes that, like Nigeria's, are descended from the prevailing English law position in the 20th century. Similarly, for litigation, arbitration or administrative proceedings, there are no electronic, complete and publicly available docket-disclosure sources.

A financial due diligence exercise is usually undertaken by financial advisers to evaluate the financial prowess or position of the target company and to reveal the accounting and financial control systems of the company, the value of its assets and liabilities, product development and competitors, solvency or insolvency status of the company, capacity of the company to raise short- and long-term loans and to service its outstanding debts, loans, etc.

VII PURCHASE AGREEMENTS AND DOCUMENTATION

The enactment of the FCCPA has resulted in purchase agreements being structured for completion to occur after the approval of the FCCPC has been obtained. Parties ensure that no action that may be interpreted as an 'implementation' of the merger is undertaken until this approval has been sought and obtained. Even for purchases that are structured as asset sales, it is imperative to obtain this approval as any uncertainty that hitherto existed as to whether merger control approval was required for asset sales no longer exists. The criteria for the determination of whether an asset sale requires prior merger control approval are now clearly stated in the FCCPA.

For a typical energy M&A, whether in the oil and gas sector or in the electric power sector, it is usual for the target company, and in some cases the shareholders, to give extensive representations and warranties around:

a the good standing of the target;
b ownership of the shares;
c authority to consummate the transaction;
d ownership of assets; and
e the financial standing of the target company.

Others include representations and warranties around liabilities that may arise from environmental issues in the purchase agreements. Such representations and warranties are considered fundamental warranties, and therefore claims may be made from these for longer durations compared to other warranties. It is also advisable to ensure that the target company and the shareholders make representations and warranties in the transaction documentations to the effect that there are no existing liens. It is also usual to have the target company and shareholders undertake to indemnify the acquirer in the event of a breach of any of the representations and warranties, and in respect of unpaid taxes.

VIII KEY REGULATORY ISSUES

As previously mentioned, the key regulatory issues are the need for sector-neutral merger control approval from the FCCPC and sector-specific approval from the NERC (for holders of NERC licences) or the Commission or Authority, as may be applicable (for oil and gas sector actors). There are also requirements relating to tax, obtaining environmental impact assessments, meeting environmental standards and holding the right permits.

To the extent that the employer of record of any employee is to change as a result of an M&A deal:

a the approval of the Commission is needed in the case of oil and gas targets;

b that of the minister for labour is needed for manual or clerical employees in both sub-sectors; and

c that of the minister for interior is needed for foreign employees in both sub-sectors.

IX INSURANCE

Representations and warranty insurance is still quite uncommon in Nigeria, and is largely unused in energy M&A deals. It is usual for the parties under an M&A transaction to escrow a certain part of the consideration to mitigate transaction risks.

X DISPUTE RESOLUTION

For most M&A contracts, the dispute resolution clause contains one or more options to be adopted in resolving disputes that may arise in connection with the transaction. The agreement often provides for both informal and formal dispute resolution mechanisms. M&As resulting from insolvency are usually characterised by acrimonious litigations. However, the courts will enforce the parties' choice of dispute resolution and governing law.

Parties may agree to subject eventual dispute to either negotiation, mediation or arbitration, or a combination thereof. The formalities governing the resolution mechanism will be spelled out under the dispute resolution clause. The parties may also choose to resolve their disputes by way of litigation.

In either case, the parties are at liberty to agree the governing law and the courts with jurisdiction with respect to claims arising from the contracts. Nigerian courts will recognise and enforce choice of foreign law and foreign jurisdiction clauses subject to public policy-type considerations. In any event, tax, immigration and other matters asserting claims against governmental authorities and matters on the dissolution or corporate status of a Nigerian insolvent company are ultimately controlled by mandatory domestic legislation, irrespective of contractual agreements between the parties.

Arbitration is fast becoming popular and the preferred dispute resolution mechanism for most oil and gas contracts in Nigeria. It is also common for parties to agree to international arbitration with a foreign seat and venue for the arbitration. Nigerian courts generally recognise international arbitration contractual provisions and awards. There are grounds for refusal of recognition or enforcement, including because of public policy issues and where the subject matter is not arbitrable under Nigerian law.

Nigeria is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and the ICSID Convention. Criminal matters are not arbitrable in Nigeria.

XI OUTLOOK

The pipeline of energy sector M&A deals is robust, but the closing of deals may be delayed. The pipeline is robust for several reasons, including:

a some IOCs have acreage divestment programmes;
b the recently concluded marginal field awards are expected to trigger more deals in the oil and gas space;
c the federal government is expected to embark on its own divestment programme soon;
d a number of energy sector companies are distressed and many of their creditors are keen to sell them; and
e the federal government is keen to sell off privatised power sector companies that are in breach of the targets agreed with them at the time of privatisation.

Delays may arise from the fact that:

a the targets may have owners who are unwilling to sell although they are under pressure from their creditors and the federal government to do so (pursuant to (*d*) and (*e*) above);
b financing is not easy to obtain in these times of widespread volatility and fluctuating prices; and
c regulators may be their usual dilatory selves in giving the approvals needed.

Appendix 1

ABOUT THE AUTHORS

GBOLAHAN ELIAS

G Elias & Co

Professor Gbolahan Elias is a partner at G Elias & Co, one of Nigeria's leading business law firms. He is also a visiting professor of law at Babcock University, Ilishan, where he teaches shipping, petroleum and arbitration law. He has published widely on a range of both historical and topical legal matters and served on numerous law reform committees, university administration boards and law journal editorial boards.

He read law at Magdalen and Merton Colleges, Oxford. He has DPhil, BCL (first-class honours), MA and BA (first-class honours) degrees from the University of Oxford. He was called to the New York Bar in 1990. Professor Elias was an associate at the Cravath firm in New York and has been a senior advocate of Nigeria since 2005. He is a member of the Chartered Institute of Arbitrators.

He has led our team on all of our electric power sector financings and on most of the firm's M&A deals. He has advised on numerous transactions in the Nigerian energy sector, including the largest acquisitions to date of electricity generation and distribution companies. He also advised on the development and negotiation of the precedent-setting power-purchase contracts and vesting contracts for the federal government-backed single buyer of grid electric power. He recently advised on a US$1.2 billion 'gas-to-power' project financing and a US$1.5 billion refinancing of NNPC petroleum product import receivables.

OKECHUKWU J OKORO

G Elias & Co

Okechukwu J Okoro is a partner in the law firm of G Elias & Co. He holds a Bachelor of Laws degree from Ebonyi State University.

He is a core member of the firm's energy sector practice. He has been actively involved in the legal review of oil and gas and electric power sector transaction documentations. He has advised on several renewable energy deals both within and outside Nigeria. Among others, he was on the team that advised NEoT Capital on its acquisition of majority shares in a Nigerian renewable energy company. He is currently advising All On Partnerships For Energy Access Limited by Guarantee, a Shell Petroleum entity (involved in interventions to address access to energy challenges in Nigeria) on sundry renewable energy issues, including investments and funding of renewable energy companies.

He advised Africa Finance Corporation on its investment in and divestment from the acquirer of a 45 per cent participating interest in an OML. Okechukwu J Okoro has advised on syndicates of local and international lenders on US$10 billion in aggregate forward sale funding for the NNPC, Shell, ExxonMobil, Chevron and Total entities.

EMEKA EZEKWESIRI

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Emeka Ezekwesiri is an associate and member of the firm's tax, energy and finance groups. He holds a Bachelor of Laws degree (first class) from Nigeria's premier university, the University of Ibadan. He represents clients at court and arbitral proceedings relating to tax and energy disputes. He is a member of the team currently advising a syndicate of lenders led by Afreximbank on the aggregate circa US$2 billion forward sale financing. Ezekwesiri has advised on over a dozen significant financings in the energy sector, with an aggregate value of more than US$5 billion. He also advises on the tax dimensions to such transactions and tax considerations for foreign investors and international entities looking to acquire entities or assets in the Nigerian energy market.

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